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CHAPTER 1

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Part 1

Short Title, Construction, Application, and Subject Matter of the Code

30-1-101. Short title. (1) Chapters 1 through 9 of this title shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1917; R.C.M. 1947, 87A-1-101.

30-1-102. Purposes — rules of construction — variation by agreement. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: En. Sec. 1-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-102.

30-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: En. Sec. 1-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-103.

Cross-References

Contracts and Other Obligations, Title 28.

Debtor and creditor relationships, Title 31, ch. 2.

Uniform Fraudulent Conveyances Act, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

30-1-104. Construction against implicit repeal. This code being a general code intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: **En. Sec. 1-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-104.**

30-1-105. Territorial application of the code — parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.
Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.
Bulk transfers subject to the Chapter on Bulk Transfers. 30-6-102.
Applicability of the Chapter on Investment Securities. 30-8-106.
Perfection provisions of the Chapter on Secured Transactions. 30-9-103.

History: **En. Sec. 1-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-105; amd. Sec. 1, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: At end of (2), substituted "Perfection provisions" for "Policy and scope" and deleted "30-9-102 and" before "30-9-103".

30-1-106. Remedies to be liberally administered. (1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: **En. Sec. 1-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-106.**

Cross-References

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30-1-107. Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: **En. Sec. 1-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-107.**

Cross-References

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DEFINITIONAL

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Rights, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-1-108. Severability. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: En. Sec. 1-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-108.

Cross-References

DEFINITIONAL

Person, 30-1-201.

30-1-109. Section captions. Section captions are parts of this code.

History: En. Sec. 1-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-109.

30-1-110. Provision for transition. Transactions validly entered into before January 1, 1965, and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment had not occurred.

History: En. Sec. 10-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-102.

30-1-111. Laws not repealed. The Chapter on Documents of Title (Chapter 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (30-1-201).

References to a "branch" or "separate office" of a bank in this code are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This code does not repeal or modify any of the following provisions: 30-11-504, relating to auctioneer's memorandum of sale; 69-14-216, relating to claims against carriers for damage to livestock; or Title 18, chapter 1, part 4, inclusive, relating to contract actions against the state.

History: En. Sec. 10-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-103.

Part 2

General Definitions and Principles of Interpretation

30-1-201. General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment is in any event subject to the provisions on consignment sales (30-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement

that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or endorsement means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History: En. Sec. 1-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-201; amd. Sec. 2, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (5), inserted "certificated" before "security"; in (9) inserted second sentence relating to minerals, oil, and gas; in (14) inserted "certificated" before "securities"; in (20) inserted "certificated" before "investment"; in (37) deleted "contract rights" before "which is subject to Chapter 9".

30-1-202. Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History: En. Sec. 1-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-202.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.

Contract, 30-1-201.

Genuine, 30-1-201.

30-1-203. Obligation of good faith. Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

History: En. Sec. 1-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-203.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Option to accelerate at will, 30-1-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Contract, 30-1-201.

Good faith, 30-1-201, 30-2-103.

30-1-204. Time — reasonable time — "seasonably". (1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: En. Sec. 1-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-204.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.

30-1-205. Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: **En. Sec. 1-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-205.**

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DEFINITIONAL

Agreement, 30-1-201.
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30-1-206. Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (30-8-319) nor to security agreements (30-9-203).

History: **En. Sec. 1-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-206.**

Cross-References

GENERAL

What contracts must be in writing, 28-2-903.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Sale, 30-2-106.
Signed, 30-1-201.
Writing, 30-1-201.

30-1-207. Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

History: **En. Sec. 1-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-207.**

Cross-References

GENERAL

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Party, 30-1-201.
Rights, 30-1-201.

30-1-208. Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: En. Sec. 1-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-208.

Cross-References

DEFINITIONAL

Burden of establishing, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

30-1-209. Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History: En. Sec. 3, Ch. 402, L. 1983.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

CHAPTER 2

UNIFORM COMMERCIAL CODE SALES

Part 1 — Short Title, General Construction, and Subject Matter

Section

30-2-101. Short title.
30-2-102. Scope — certain security and other transactions excluded from this chapter.
30-2-103. Definitions and index of definitions.
30-2-104. Definitions — "merchant" — "between merchants" — "financing agency".
30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit".
30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation".
30-2-107. Goods to be severed from realty — recording.

Part 2 — Form, Formation, and Readjustment of Contract

30-2-201. Formal requirements — statute of frauds.
30-2-202. Final written expression — parol or extrinsic evidence.
30-2-203. Seals inoperative.
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30-2-205. Firm offers.
30-2-206. Offer and acceptance in formation of contract.
30-2-207. Additional terms in acceptance or confirmation.
30-2-208. Course of performance or practical construction.
30-2-209. Modification, rescission and waiver.
30-2-210. Delegation of performance — assignment of rights.

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30-2-301. General obligations of parties.
30-2-302. Unconscionable contract or clause.
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30-2-304. Price payable in money, goods, realty, or otherwise.
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30-2-308. Absence of specified place for delivery.
30-2-309. Absence of specific time provisions — notice of termination.
30-2-310. Open time for payment or running of credit — authority to ship under reservation.
30-2-311. Options and cooperation respecting performance.
30-2-312. Warranty of title and against infringement — buyer's obligation against infringement.
30-2-313. Express warranties by affirmation, promise, description, sample.
30-2-314. Implied warranty — merchantability — usage of trade.
30-2-315. Implied warranty — fitness for particular purpose.
30-2-316. Exclusion or modification of warranties.
30-2-317. Cumulation and conflict of warranties express or implied.
30-2-318. Third-party beneficiaries of warranties express or implied.
30-2-319. F.O.B. and F.A.S. terms.
30-2-320. C.I.F. and C.&F. terms.
30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival.
30-2-322. Delivery "ex-ship".
30-2-323. Form of bill of lading required in overseas shipment — "overseas".
30-2-324. "No arrival, no sale" term.
30-2-325. "Letter of credit" term — "confirmed credit".
30-2-326. Sale on approval and sale or return — consignment sales and rights of creditors.
30-2-327. Special incidents of sale on approval and sale or return.

Part 4 — Title, Creditors, and Good Faith Purchasers

30-2-401. Passing of title — reservation for security — limited application of this section.
30-2-402. Rights of seller's creditors against sold goods.
30-2-403. Power to transfer — good faith purchase of goods — "entrusting".

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30-2-501. Insurable interest in goods — manner of identification of goods.
30-2-502. Buyer's right to goods on seller's insolvency.
30-2-503. Manner of seller's tender of delivery.
30-2-504. Shipment by seller.
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30-2-506. Rights of financing agency.
30-2-507. Effect of seller's tender — delivery on condition.
30-2-508. Cure by seller of improper tender or delivery — replacement.
30-2-509. Risk of loss in the absence of breach.
30-2-510. Effect of breach on risk of loss.
30-2-511. Tender of payment by buyer — payment by check.
30-2-512. Payment by buyer before inspection.
30-2-513. Buyer's right to inspection of goods.
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30-2-602. Manner and effect of rightful rejection.
30-2-603. Merchant buyer's duties as to rightfully rejected goods.
30-2-604. Buyer's options as to salvage of rightfully rejected goods.
30-2-605. Waiver of buyer's objections by failure to particularize.
30-2-606. What constitutes acceptance of goods.

30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over.
30-2-608. Revocation of acceptance in whole or in part.
30-2-609. Right to adequate assurance of performance.
30-2-610. Anticipatory repudiation.
30-2-611. Retraction of anticipatory repudiation.
30-2-612. "Installment contract" — breach.
30-2-613. Casualty to identified goods.
30-2-614. Substituted performance.
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30-2-701. Remedies for breach of collateral contracts not impaired.
30-2-702. Seller's remedies on discovery of buyer's insolvency.
30-2-703. Seller's remedies in general.
30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
30-2-705. Seller's stoppage of delivery in transit or otherwise.
30-2-706. Seller's resale including contract for resale.
30-2-707. "Person in the position of a seller".
30-2-708. Seller's damages for nonacceptance or repudiation.
30-2-709. Action for the price.
30-2-710. Seller's incidental damages.
30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods.
30-2-712. "Cover" — buyer's procurement of substitute goods.
30-2-713. Buyer's damages for nondelivery or repudiation.
30-2-714. Buyer's damages for breach in regard to accepted goods.
30-2-715. Buyer's incidental and consequential damages.
30-2-716. Buyer's right to specific performance or recovery of goods.
30-2-717. Deduction of damages from the price.
30-2-718. Liquidation or limitation of damages — deposits.
30-2-719. Contractual modification or limitation of remedy.
30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
30-2-721. Remedies for fraud.
30-2-722. Who can sue third parties for injury to goods.
30-2-723. Proof of market price — time and place.
30-2-724. Admissibility of market quotations.
30-2-725. Statute of limitations in contracts for sale.

Chapter Cross-References

Sales, Title 30, ch. 11.

Retail Installment Sales Act, Title 31, ch. 1, part 2.

Itinerant merchants, 80-3-701.

Sale of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk, 81-23-102.

Regulation of sale of coal, 82-3-201.

Part 1

Short Title, General Construction, and Subject Matter

30-2-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

History: **En. Sec. 2-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-101.**

30-2-102. Scope — certain security and other transactions excluded from this chapter. Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History: En. Sec. 2-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-102.

Cross-References

GENERAL

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

Sales, Title 30, ch. 11.

Personal solicitation sales, Title 30, ch. 14, part 5.

Lost property, duties of finder, 70-5-101 through 70-5-207.

DEFINITIONAL

Contract, 30-1-201.

Contract for sale, 30-2-106.

Present sale, 30-2-106.

Sale, 30-2-106.

30-2-103. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance". 30-2-606.
"Banker's credit". 30-2-325.
"Between merchants". 30-2-104.
"Cancellation". 30-2-106(4).
"Commercial unit". 30-2-105.
"Confirmed credit". 30-2-325.
"Conforming to contract". 30-2-106.
"Contract for sale". 30-2-106.
"Cover". 30-2-712.
"Entrusting". 30-2-403.
"Financing agency". 30-2-104.
"Future goods". 30-2-105.
"Goods". 30-2-105.
"Identification". 30-2-501.
"Installment contract". 30-2-612.
"Letter of credit". 30-2-325.
"Lot". 30-2-105.
"Merchant". 30-2-104.
"Overseas". 30-2-323.
"Person in position of seller". 30-2-707.
"Present sale". 30-2-106.
"Sale". 30-2-106.
"Sale on approval". 30-2-326.
"Sale or return". 30-2-326.
"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Consignee". 30-7-102.
"Consignor". 30-7-102.
"Consumer goods". 30-9-109.
"Dishonor". 30-3-507.
"Draft". 30-3-104.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 2-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-103.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Person, 30-1-201.

30-2-104. Definitions — "merchant" — "between merchants" — "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History: En. Sec. 2-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-104.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

C.I.F. and C.&F. terms, 30-2-320.

"Letter of credit" term — "confirmed credit", 30-2-325.

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

Merchant's rights, Title 30, ch. 11, part 3.

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Bank, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Person, 30-1-201.
Purchase, 30-1-201.
Seller, 30-2-103.

30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (30-2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History: En. Sec. 2-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-105.

Cross-References

GENERAL

Formal requirements — Statute of Frauds, 30-2-201.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fungible, 30-1-201.
Money, 30-1-201.
Present sale, 30-2-106.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation". (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both

sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

History: En. Sec. 2-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-106.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Sale defined, 30-11-101.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-107. Goods to be severed from realty — recording. (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

History: En. Sec. 2-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-107; amd. Sec. 4, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), deleted "timber" before "minerals"; in (1) inserted "(including oil and gas)"; in (2) inserted "or of timber to be cut" after "not described in subsection (1)".

Cross-References

GENERAL

Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit", 30-2-105.

Formal requirements — Statute of Frauds, 30-2-201.

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Present sale, 30-2-106.
Rights, 30-1-201.
Seller, 30-2-103.

Part 2

Form, Formation, and Readjustment of Contract

30-2-201. Formal requirements — statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606).

History: **En. Sec. 2-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-201.**

Cross-References

GENERAL

Contracts required to be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

Modification, rescission and waiver, 30-2-209.

Price payable in money, goods, realty, or otherwise, 30-2-304.

Bulk transfers, 30-6-101 through 30-6-111.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Action, 30-1-201.
Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: En. Sec. 2-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-202.

Cross-References

GENERAL

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Additional terms in acceptance or confirmation, 30-2-207.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Course of dealing, 30-1-205.
Parties, 30-1-201.
Term, 30-1-201.
Usage of trade, 30-1-205.
Written and writing, 30-1-201.

30-2-203. Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History: En. Sec. 2-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-203.

Cross-References

GENERAL

Seals, Title 1, ch. 4, part 2.
Firm offers, 30-2-205.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Writing, 30-1-201.

30-2-204. Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

History: En. Sec. 2-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-204.

Cross-References

GENERAL

Essential elements of a contract, 28-2-102.

Supplementary general principles of law applicable, 30-1-103.

Formal requirements — Statute of Frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.

30-2-205. Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: En. Sec. 2-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-205.

Cross-References

GENERAL

Contracts — communication of consent — revocation of proposal, Title 28, ch. 2, part 5.

Purposes — rule of construction — variation by agreement, 30-1-102.

Formal requirements — Statute of Frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Goods, 30-2-105.
Merchant, 30-2-104.
Signed, 30-1-201.
Writing, 30-1-201.

30-2-206. Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: En. Sec. 2-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-206.

Cross-References

GENERAL

Essential characteristics of consent, 28-2-301.
Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.

30-2-207. Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional or different terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties

agree, together with any supplementary terms incorporated under any other provisions of this code.

History: En. Sec. 2-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-207; amd. Sec. 5, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), inserted "or different" after "The additional".

Cross-References

Effect of written contract on oral agreements, 28-2-904.

Rules of construction, variation by agreement, 30-1-102.

Transactions between merchants, 30-2-104.

Unconscionable contract or clause, 30-2-302.

Buyer's right to inspection of goods, 30-2-513.

Manner and effect of rightful rejection, 30-2-602.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

30-2-208. Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (30-1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History: En. Sec. 2-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-208.

Cross-References

Intention of the parties, Title 28, ch. 3, part 3.

Final written expression — parol or extrinsic evidence, 30-2-202.

Modification, rescission and waiver, 30-2-209.

Buyer's rights on improper delivery, 30-2-601.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

30-2-209. Modification, rescission and waiver. (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History: **En. Sec. 2-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-209.**

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.

Rescission of contracts, Title 28, ch. 2, part 17.

Obligation of good faith, 30-1-203.

Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation", 30-2-106.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Course of performance or practical construction, 30-2-208.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Agreement, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Notification, 30-1-201.
Signed, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-2-210. Delegation of performance — assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (30-2-609).

History: **En. Sec. 2-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-210.**

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Output, requirements and exclusive dealings, 30-2-306.

Letters of credit, Title 30, ch. 5.

Secured transactions, sale of accounts, contract rights, and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

Part 3

General Obligation and Construction of Contract

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

30-2-301. General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History: En. Sec. 2-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-301.

Cross-References

GENERAL

Obligations in general, Title 28, ch. 1.

Remedies to be liberally administered, 30-1-106.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Modification, rescission, and waiver, 30-2-209.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-302. Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History: En. Sec. 2-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-302.

Cross-References

GENERAL

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

DEFINITIONAL

Contract, 30-1-201.

30-2-303. Allocation or division of risks. Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

History: En. Sec. 2-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-303.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

DEFINITIONAL

Agreement, 30-1-201.
Party, 30-1-201.

30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History: En. Sec. 2-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-304.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Construction against implicit repeal, 30-1-104.

Goods to be severed from realty — recording, 30-2-107.

DEFINITIONAL

Goods, 30-2-105.
Money, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History: En. Sec. 2-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-305.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Formation in general, 30-2-204.

Options and cooperation respecting performance, 30-2-311.

Anticipatory repudiation, 30-2-610.

Seller's resale including contract for resale, 30-2-706.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.

Contract, 30-1-201.
Contract for sale, 30-2-106.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Term, 30-1-201.

30-2-306. Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History: En. Sec. 2-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-306.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.
Delegation of performance — assignment of rights, 30-2-210.
Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

30-2-307. Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

History: En. Sec. 2-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-307.

Cross-References

GENERAL

Application of performance when there are several obligations, 28-1-1106.
Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Buyer's rights on improper delivery, 30-2-601.
Revocation of acceptance in whole or in part, 30-2-608.
Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.

30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

History: En. Sec. 2-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-308.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.
Manner of seller's tender of delivery, 30-2-503.
Shipment by seller, 30-2-504.
Seller's shipment under reservation, 30-2-505.
Payment by buyer before inspection, 30-2-512.
Collection of documentary drafts, Title 30, ch. 4, part 5.
Letters of credit, Title 30, ch. 5.
Delivery — where made, 30-11-204.
Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.

30-2-309. Absence of specific time provisions — notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History: En. Sec. 2-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-309.

Cross-References

GENERAL

Time of performance, Title 28, ch. 3, part 6.
Obligation of good faith, 30-1-203.
Time — reasonable time — seasonably, 30-1-204.
Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming to contract" — "termination" — "cancellation", 30-2-106.
Formation in general, 30-2-204.
Third party beneficiaries of warranties express or implied, 30-2-318.
C.I.F. and C.&F. terms, 30-2-320.
C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.
Shipment by seller, 30-2-504.
Tender of payment by buyer — payment by check, 30-2-511.
Payment by buyer before inspection, 30-2-512.
Buyer's right to inspection of goods, 30-2-513.
When documents deliverable on acceptance — when on payment, 30-2-514.
Right to adequate assurance of performance, 30-2-609.
Anticipatory repudiation, 30-2-610.
Seller's remedies in general, 30-2-703.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Notification, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Termination, 30-2-106.

30-2-310. Open time for payment or running of credit — authority to ship under reservation. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History: En. Sec. 2-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-310.

Cross-References

GENERAL

Absence of specified place for delivery, 30-2-308.
Seller's shipment under reservation, 30-2-505.
Risk of loss in the absence of breach, 30-2-509.
Tender of payment by buyer — payment by check, 30-2-511.
Payment by buyer before inspection, 30-2-512.
Bank deposits and collections, Title 30, ch. 4.

DEFINITIONAL

Buyer, 30-2-103.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History: En. Sec. 2-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-311.

Cross-References

GENERAL

Extinction of obligation by performance, Title 28, ch. 1, part 11.
Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.
When delay or failure to perform or offer to perform excused, 28-1-1301.
Obligation of good faith, 30-1-203.
Right to adequate assurance of performance, 30-2-609.
Substituted performance, 30-2-614.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-312. Warranty of title and against infringement — buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History: En. Sec. 2-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-312.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Obligation of good faith, 30-1-203.

Exclusion or modification of warranties, 30-2-316.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

Statute of Limitations in contracts for sale, 30-2-725.

Warranty of title to personal property, 30-11-211.

DEFINITIONAL

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Goods, 30-2-105.

Person, 30-1-201.

Rights, 30-1-201.

Seller, 30-2-103.

30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History: En. Sec. 2-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-313.

Cross-References

GENERAL

Warranty on sale by sample, 28-11-212.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Course of dealing and usage of trade, 30-1-205.

Modification, rescission, and waiver, 30-2-209.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Warranty when seller knows that buyer relies on his statements, 30-11-213.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-314. Implied warranty — merchantability — usage of trade. (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Definitions — "merchant" — "between merchants" — "financing agency", 30-2-104.

Implied warranty — fitness for particular purpose, 30-2-315.

Manufacturer's warranty against latent defects, 30-11-215.

Warranty of fitness for particular purpose, 30-11-216.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Merchant, 30-2-104.
Seller, 30-2-103.

30-2-315. Implied warranty — fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History: En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

Cross-References

GENERAL

Allocation or division of risks, 30-2-303.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Warranty of fitness for particular purpose, 30-11-216.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719).

History: En. Sec. 2-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-316; amd. Sec. 1, Ch. 95, L. 1979; amd. Sec. 1, Ch. 33, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3)(e).

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists, 30-9-206.

No implied warranty in mere contract for sale, 30-11-210.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Course of dealing, 30-1-205.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.
Usage of trade, 30-1-205.

30-2-317. Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.

Cross-References

GENERAL

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Warranty on sale by sample, 30-11-212.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Party, 30-1-201.

30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

History: En. Sec. 2-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-318.

Cross-References

GENERAL

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Buyers incidental and consequential damages, 30-2-715.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists, 30-9-206.

Manufacturer's warranty against latent defects, 30-11-215.

DEFINITIONAL

Buyer, 30-2-103.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-319.

Cross-References

GENERAL

Expense of transportation, 30-11-205.
Transportation, 30-11-207.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-320, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-320.

Cross-References

Prima facie evidence by third-party documents, 30-1-202.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Risk of loss in the absence of breach, 30-2-509.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Letters of credit, Title 30, ch. 5.

Expense of transportation, 30-11-205.

30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History: En. Sec. 2-321, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-321.

Cross-References

GENERAL

C.I.F. and C. & F. terms, 30-2-320.
"No arrival, no sale" terms, 30-2-324.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

30-2-322. Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History: En. Sec. 2-322, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-322.

Cross-References

GENERAL

F.O.B. and F.A.S. terms, 30-2-319.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

30-2-323. Form of bill of lading required in overseas shipment — "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History: En. Sec. 2-323, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-323.

Cross-References

GENERAL

Indemnities, 30-5-113.
Bills of lading — special provisions, Title 30, ch. 7, part 3.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Person, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613).

History: En. Sec. 2-324, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-324.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.
Term, 30-1-201.

30-2-325. "Letter of credit" term — "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History: En. Sec. 2-325, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-325.

Cross-References

GENERAL

Deposit of money offered in payment, 28-1-1225.

Power to transfer — good faith purchase of goods — entrusting, 30-2-403.

Tender of payment by buyer — payment by check, 30-2-511.

Effect of instrument on obligation for which it is given, 30-3-802.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Draft, 30-3-104.
Financing agency, 30-2-104.
Notifies, 30-1-201.
Overseas, 30-2-323.
Purchaser, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

30-2-326. Sale on approval and sale or return — consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with

respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202).

History: En. Sec. 2-326, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-326.

Cross-References

GENERAL

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Creditor, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-327. Special incidents of sale on approval and sale or return.

(1) Under a sale on approval unless otherwise agreed:

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

History: En. Sec. 2-327, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-327.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Commercial unit, 30-2-105.

Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Notifies, 30-1-201.
Sale on approval, 30-2-326.
Sale or return, 30-2-326.
Seasonably, 30-1-204.
Seller, 30-2-103.

Part 4

Title, Creditors, and Good Faith Purchasers

30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn, notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment, and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975; R.C.M. 1947, 87A-2-401.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Scope — certain security and other transactions excluded from this chapter, 30-2-102.

Rights of seller's creditors against sold goods, 30-2-402.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Buyer's right to goods on seller's insolvency, 30-2-502.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.

30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

History: En. Sec. 2-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-402.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

When a seller must act as a depositary, 30-11-201.

DEFINITIONAL

Contract for sale, 30-2-106.
Creditor, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.

Money, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-403. Power to transfer — good faith purchase of goods — "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9), bulk transfers (chapter 6) and documents of title (chapter 7).

History: En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977; R.C.M. 1947, 87A-2-403.

Cross-References

GENERAL

General duty of care, 28-1-201.

Offer to be made in good faith, 28-1-1209.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Rights of seller's creditors against sold goods, 30-2-402.

"Person in the position of seller", 30-2-707.

Title under warehouse receipt defeated in certain cases, 30-7-205.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.

Good faith, 30-1-201, 30-2-103.

Goods, 30-2-105.

Merchant, 30-2-104.

Person, 30-1-201.

Purchaser, 30-1-201.

Signed, 30-1-201.

Term, 30-1-201.

Value, 30-1-201.

Part 5

Performance

Part Cross-References

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Prevention of performance, Title 28, ch. 1, part 13.

30-2-501. Insurable interest in goods — manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History: En. Sec. 2-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-501.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit", 30-2-105.

Goods to be severed from realty — recording, 30-2-107.

Absence of specified place for delivery, 30-2-308.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Manner of seller's tender of delivery, 30-2-503.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's remedies in general, 30-2-703.

Commission merchants to acknowledge receipt of property, 30-11-401.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Future goods, 30-2-105.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-502. Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History: En. Sec. 2-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-502.

Cross-References

GENERAL

Rights of seller's creditors against sold goods, 30-2-402.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Insolvent, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-503. Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History: En. Sec. 2-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-503.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Specific matters involving tender, 30-1-205, 30-2-301, 30-2-306 through 30-2-319, 30-2-321, 30-2-504, 30-2-507, 30-2-511, 30-2-513, 30-2-612, 30-2-614.

Course of dealing and usage of trade, 30-1-205.

General obligations of parties, 30-2-301.

Absence of specified place for delivery, 30-2-308.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Effect of seller's tender — delivery in condition, 30-2-507.

Risk of loss in the absence of breach, 30-2-509.

Buyer's right to inspection of goods, 30-2-513.

Substituted performance, 30-2-614.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Delivery on demand, 30-11-203.

Delivery — where made, 30-11-204.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Delivery, 30-1-201.
Dishonor, 30-3-508.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Written, 30-1-201.

30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

History: En. Sec. 2-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-504.

Cross-References

GENERAL

Extinction when directions of creditor followed, 28-1-1104.

Obligation of good faith, 30-1-203.

Options and cooperation respecting performance, 30-2-311.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

Manner of seller's tender of delivery, 30-2-503.

Buyer's rights on improper delivery, 30-2-601.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

Delivery on demand, 30-11-203.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Usage of trade, 30-1-205.

30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History: En. Sec. 2-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-505.

Cross-References

GENERAL

When offer may be conditional, 28-1-1211.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Shipment by seller, 30-2-504.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Consignee, 30-7-102.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Holder, 30-1-201.
Person, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-506. Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History: En. Sec. 2-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-506.

Cross-References

GENERAL

Rights arising out of obligation transferable, 28-1-1001.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Bank deposits and collections, Title 30, ch. 4.

Letters of credit, Title 30, ch. 5.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Financing agency, 30-2-104.
Good faith, 30-2-103.
Goods, 30-2-105.
Honor, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Value, 30-1-201.

30-2-507. Effect of seller's tender — delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History: **En. Sec. 2-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-507.**

Cross-References

GENERAL

When obligation extinguished by offer of performance, 28-1-1201.

Offeror to be willing and able to perform, 28-1-1210.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Passing of title, reservation for security, 30-2-401.

Good faith purchase of goods, 30-2-403.

Manner of seller's tender of delivery, 30-2-503.

Tender of payment by buyer — payment by check, 30-2-511.

Buyer's rights on improper delivery, 30-2-601.

Substituted performance, 30-2-614.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's damages for nondelivery or repudiation, 30-2-713.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-508. Cure by seller of improper tender or delivery — replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History: **En. Sec. 2-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-508.**

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Offer of partial performance ineffective, 28-1-1203.

Course of dealing and usage of trade, 30-1-205.

Unconscionable contract or clause, 30-2-302.

Tender of payment by buyer — payment by check, 30-2-511.

Buyer's rights on improper delivery, 30-2-601.

Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Money, 30-1-201.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).

History: En. Sec. 2-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-509.

Cross-References

GENERAL

Shipment by seller, 30-2-504.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Sale on approval, 30-2-326.
Seller, 30-2-103.

30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History: En. Sec. 2-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-510.

Cross-References

GENERAL

Breach of contract, 27-1-311.
Risk of loss in the absence of breach, 30-2-509.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-511. Tender of payment by buyer — payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History: **En. Sec. 2-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-511.**

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.
Deposit of money offered in payment, 28-1-1225.
Delivery in single lot or several lots, 30-2-307.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Delivery "ex-ship", 30-2-322.
"Letter of credit" term — "confirmed credit", 30-2-325.
Manner of seller's tender of delivery, 30-2-503.
Shipment by seller, 30-2-504.
Effect of seller's tender — delivery on condition, 30-2-507.
Buyer's right to inspection of goods, 30-2-513.
Right to adequate assurance of performance, 30-2-609.
Substituted performance, 30-2-614.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Commercial paper, Title 30, ch. 3.
Certification of a check, 30-3-411.

DEFINITIONAL

Buyer, 30-2-103.
Check, 30-3-104.
Dishonor, 30-3-508.
Party, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

30-2-512. Payment by buyer before inspection. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (30-5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

History: **En. Sec. 2-512, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-512.**

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.
Buyer's right to inspection of goods, 30-2-513.
Letters of credit, Title 30, ch. 5.
Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Remedy, 30-1-201.
Rights, 30-1-201.

30-2-513. Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of 30-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History: En. Sec. 2-513, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-513.

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Time — reasonable time — "seasonably", 30-1-204.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Exclusion or modification of warranties, 30-2-316.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's incidental and consequential damages, 30-2-715.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Presumed, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-514. When documents deliverable on acceptance — when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

History: En. Sec. 2-514, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-514.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Buyer's right to goods on seller's insolvency, 30-2-502.

Seller's shipment under reservation, 30-2-505.

Effect of seller's tender — delivery on condition, 30-2-507.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.

30-2-515. Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute:

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History: En. Sec. 2-515, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-515.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Thing offered to be kept separate, 28-1-1223.

Prima facie evidence by third-party documents, 30-1-202.

Performance or acceptance under reservation of rights, 30-1-207.

Buyer's right to inspection of goods, 30-2-513.

Casualty to identified goods, 30-2-613.

Seller's resale including contract for resale, 30-2-706.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Bulk transfers, Title 30, ch. 6.

DEFINITIONAL

Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.

Part 6

Breach, Repudiation, and Excuse

30-2-601. Buyer's rights on improper delivery. Subject to the provisions of this chapter on breach in installment contracts (30-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (30-2-718 and 30-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

History: En. Sec. 2-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-601.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Manner and effect of rightful rejection, 30-2-602.

Delivery — where made, 30-11-204.

Delivery to be within reasonable hours, 30-11-208.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Installment contract, 30-2-612.
Rights, 30-1-201.

30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703).

History: En. Sec. 2-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-602.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Effect of refusal to accept performance before offer, 28-1-1304.

Time — reasonable time — "seasonably", 30-1-204.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Improper delivery, buyer's rights, 30-2-601.

What constitutes acceptance of goods, 30-2-606.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Merchant, 30-2-104.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Rights, 30-1-201.
Seasonably, 30-1-204.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History: En. Sec. 2-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-603.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Seller's resale including contract for resale, 30-2-706.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Good faith, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History: En. Sec. 2-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-604.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Manner and effect of rightful rejection, 30-2-602.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Buyer, 30-2-103.

Notification, 30-1-201.

Reasonable time, 30-1-204.

Seller, 30-2-103.

30-2-605. Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History: En. Sec. 2-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-605.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Payment by buyer before inspection, 30-2-512.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Between merchants, 30-2-104.

Buyer, 30-2-103.

Seasonably, 30-1-204.

Seller, 30-2-103.

Writing and written, 30-1-201.

30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: En. Sec. 2-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-606.

Cross-References

GENERAL

Extinction of obligation by full performance, 28-1-1101.

Extinction when directions of creditor followed, 28-1-1104.

Passing of title — reservation for security — limited application, 30-2-401.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Buyer's options as to salvage of rightfully rejected goods, 30-2-604.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Remedies, Title 30, ch. 2, part 7.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312).

History: En. Sec. 2-607, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-607.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Performance or acceptance under reservation of rights, 30-1-207.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Revocation of acceptance in whole or in part, 30-2-608.

Deduction of damages from the price, 30-2-717.

Notice to third party, 30-3-803.
Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Seasonably, 30-1-204.

30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History: En. Sec. 2-608, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-608.

Cross-References

GENERAL

Offer of partial performance ineffective, 28-1-1203.
When party may rescind, 28-2-1711.
Time — reasonable time — "seasonably", 30-1-204.
Buyer's rights on improper delivery, 30-2-601.
Manner and effect of rightful rejection, 30-2-602.
Waiver of buyer's objections by failure to particularize, 30-2-605.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History: **En. Sec. 2-609, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-609.**

Cross-References

GENERAL

Offer to be made in good faith, 28-1-1209.

Offeror to be able and willing to perform, 28-1-1210.

Obligation of good faith, 30-1-203.

Option to accelerate at will, 30-1-208.

Retraction of anticipatory repudiation, 30-2-611.

Commercial paper, Title 30, ch. 3.

Secured transactions, sales of accounts and chattel paper, Title 30, ch. 9.

Warranty when seller knows buyer relies on his statements, 30-11-213.

DEFINITIONAL

Aggrieved party, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Party, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Writing, 30-1-201.

30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (30-2-703 or 30-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704).

History: **En. Sec. 2-610, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-610.**

Cross-References

GENERAL

Effect of refusal to accept performance before offer, 28-1-1304.

When proposal may be revoked, 28-2-511.

Obligation of good faith, 30-1-203.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

DEFINITIONAL

Aggrieved party, 30-1-201.
Contract, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.

30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: **En. Sec. 2-611, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-611.**

Cross-References

GENERAL

Anticipatory repudiation, 30-2-610.

DEFINITIONAL

Aggrieved party, 30-1-201.
Cancellation, 30-2-106.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.

30-2-612. "Installment contract" — breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History: En. Sec. 2-612, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-612.

Cross-References

GENERAL

Breach of contract, 27-1-311.
Obligation of good faith, 30-1-203.
Course of performance or practical construction, 30-2-208.
Delivery in single lot or several lots, 30-2-307.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Right to adequate assurance of performance, 30-2-609.
Anticipatory repudiation, 30-2-610.
Retail installment sales, Title 31, ch. 1, part 2.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Conform, 30-2-106.
Contract, 30-1-201.
Lot, 30-2-105.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History: En. Sec. 2-613, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-613.

Cross-References

GENERAL

Preserving evidence of goods in dispute, 30-2-515.
Who can sue third parties for injury to goods, 30-2-722.

DEFINITIONAL

Buyer, 30-2-103.

Conform, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-614. Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History: En. Sec. 2-614, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-614.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Objections to mode of offer — waiver, 28-1-1212.

Modification of contracts, Title 28, ch. 2, part 16.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Fault, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

History: En. Sec. 2-615, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-615.

Cross-References

GENERAL

What conditions must be performed before requiring performance by another, 28-1-406.

When delay or failure to perform or offer to perform excused, 28-1-1301.

Effect when performance prevented by other causes, 28-1-1303.

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Unconscionable contract or clause, 30-2-302.

Output, requirements, and exclusive dealings, 30-2-306.
Right to adequate assurance of performance, 30-2-609.
Casualty to identified goods, 30-2-613.
Substituted performance, 30-2-614.
Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Merchant, 30-2-104.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

History: En. Sec. 2-616, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-616.

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.
Extinction of contracts — rescission, Title 28, ch. 2, part 17.
Modification, rescission, and waiver, 30-2-209.
Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Installment contract, 30-2-612.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.
Termination, 30-2-106.
Written, 30-1-201.

Part 7

Remedies

Part Cross-References

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-2-701. Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

History: En. Sec. 2-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-701.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Breach of obligation other than contract, 27-1-317.

When several contracts taken together, 28-3-203.

DEFINITIONAL

Contract for sale, 30-2-106.

Remedy, 30-1-201.

30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

History: En. Sec. 2-702, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-702; amd. Sec. 6, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (3), deleted "or lien creditor" after "good faith purchaser".

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Buyer's right to goods on seller's insolvency, 30-2-502.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Buyer in ordinary course of business, 30-1-201.

Contract, 30-1-201.

Good faith, 30-1-201.

Goods, 30-2-105.

Insolvent, 30-1-201.

Person, 30-1-201.

Purchaser, 30-1-201.

Receipt of goods, 30-2-103.

Remedy, 30-1-201.

Rights, 30-1-201.

Seller, 30-2-103.

Writing, 30-1-201.

30-2-703. Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (30-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (30-2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (30-2-706);

(e) recover damages for nonacceptance (30-2-708) or in a proper case the price (30-2-709);

(f) cancel.

History: En. Sec. 2-703, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-703.

Cross-References

GENERAL

Availability of remedies — liability, Title 27, ch. 1.

Remedies to be liberally administered, 30-1-106.

"Letter of credit" term — "confirmed credit", 30-2-325.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History: En. Sec. 2-704, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-704.

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Thing offered to be kept separate, 28-1-1223.

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Aggrieved party, 30-1-201.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-705. Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 2-705, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-705.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Right to adequate assurance of performance, 30-2-609.

Seller's remedies in general, 30-2-703.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Insolvent, 30-1-201.
Notification, 30-1-201.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any

excess over the amount of his security interest, as hereinafter defined (subsection (3) of 30-2-711).

History: **En. Sec. 2-706, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-706.**

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.
Anticipatory repudiation, 30-2-610.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Person in the position of a seller, 30-2-707.
Seller's damages for nonacceptance or repudiation, 30-2-708.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Person in position of seller, 30-2-707.
Purchase, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710).

History: **En. Sec. 2-707, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-707.**

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.
Rights of financing agency, 30-2-506.
Letters of credit, Title 30, ch. 5.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Consignee, 30-7-102.
Consignor, 30-7-102.
Goods, 30-2-105.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-708. Seller's damages for nonacceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (30-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History: **En. Sec. 2-708, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-708.**

Cross-References

GENERAL

Acceptance to be absolute, 28-2-504.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Delivery "ex-ship", 30-2-322.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

"No arrival, no sale" term, 30-2-324.

Manner of seller's tender of delivery, 30-2-503.

Action for price, 30-2-709.

Admissibility of market quotations, 30-2-724.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Contract, 30-1-201.

Seller, 30-2-103.

30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

History: En. Sec. 2-709, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-709.

Cross-References

GENERAL

Remedies to be liberally administered, 30-1-106.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods, 30-2-704.

Seller's damages for nonacceptance or repudiation, 30-2-708.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.

Buyer, 30-2-103.

Conforming, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-710. Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History: En. Sec. 2-710, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-710.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

DEFINITIONAL

Aggrieved party, 30-1-201.

Buyer, 30-2-103.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706).

History: En. Sec. 2-711, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-711.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Buyer's rights on improper delivery, 30-2-601.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's damages for breach in regard to accepted goods, 30-2-714.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Cover, 30-2-712.
Goods, 30-2-105.
Notifies, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-712. "Cover" — buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History: En. Sec. 2-712, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-712.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Time — reasonable time — "seasonably", 30-1-204.

Seller's resale including contract for resale, 30-2-706.

Buyer's damages for nondelivery or repudiation, 30-2-713.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.

Contract, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Purchase, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-713. Buyer's damages for nondelivery or repudiation. (1) Subject to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (30-2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History: En. Sec. 2-713, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-713.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Remedies to be liberally administered, 30-1-106.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Seller, 30-2-103.

30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History: En. Sec. 2-714, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-714.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Revocation of acceptance in whole or in part, 30-2-608.
Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.
Buyer's damages for nondelivery or repudiation, 30-2-713.
Buyer's incidental and consequential damages, 30-2-715.
Deduction of damages from the price, 30-2-717.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Seller, 30-2-103.

30-2-715. Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: **En. Sec. 2-715, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-715.**

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Obligation of good faith, 30-1-203.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Revocation of acceptance in whole or in part, 30-2-608.

Excuse by failure of presupposed conditions, 30-2-615.

Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Cover, 30-2-712.

Goods, 30-2-105.

Person, 30-1-201.

Receipt of goods, 30-2-103.

Seller, 30-2-103.

30-2-716. Buyer's right to specific performance or recovery of goods. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History: **En. Sec. 2-716, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-716.**

Cross-References

GENERAL

When specific performance of an obligation may be compelled, 27-1-411.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Action for the price, 30-2-709.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.

Goods, 30-2-105.

Rights, 30-1-201.

30-2-717. Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

History: **En. Sec. 2-717, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-717.**

Cross-References

GENERAL

Damages — when replacement value to be allowed, 27-1-306.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Buyer, 30-2-103.

Notifies, 30-1-201.

30-2-718. Liquidation or limitation of damages — deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706).

History: En. Sec. 2-718, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-718.

Cross-References

GENERAL

Limitation of damages for breach of obligation, 27-1-303.

Deposit of money offered in payment, 28-1-1225.

Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

30-2-719. Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for

injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History: **En. Sec. 2-719, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-719.**

Cross-References

GENERAL

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

When provision fixing liquidated damages valid, 28-2-721.

Remedies to be liberally administered, 30-1-106.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History: **En. Sec. 2-720, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-720.**

Cross-References

GENERAL

Breach of contract, 27-1-311.

Rescission of contracts, Title 28, ch. 2, part 17.

Waiver or renunciation of claim or right after breach, 30-1-107.

DEFINITIONAL

Cancellation, 30-2-106.
Contract, 30-1-201.

30-2-721. Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History: **En. Sec. 2-721, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-721.**

Cross-References

GENERAL

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Remedy, 30-1-201.

30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

History: En. Sec. 2-722, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-722.

Cross-References

GENERAL

Rights arising out of obligation transferable, 28-1-1001.
Casualty to identified goods, 30-2-613.

DEFINITIONAL

Action, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-2-723. Proof of market price — time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History: En. Sec. 2-723, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-723.

Cross-References

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Usage of trade, 30-1-205.

30-2-724. Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History: En. Sec. 2-724, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-724.

Cross-References

GENERAL

Relevant evidence generally admissible, Rule 402, Montana Rules of Evidence (see Title 26, ch. 10).
Proof of market price — time and place, 30-2-723.

DEFINITIONAL

Goods, 30-2-105.

30-2-725. Statute of limitations in contracts for sale. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective.

History: En. Sec. 2-725, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-725.

Cross-References

GENERAL

Statute of Limitations — actions based on contract or other obligation, 27-2-202.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
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CHAPTER 3

UNIFORM COMMERCIAL CODE
COMMERCIAL PAPER

Part 1 — Short Title, Form, and Interpretation

Section

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Chapter Cross-References

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

Short Title, Form, and Interpretation

30-3-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

History: **En. Sec. 3-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-101.**

30-3-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.

"Accommodation party". 30-3-415.

"Alteration". 30-3-407.
"Certificate of deposit". 30-3-104.
"Certification". 30-3-411.
"Check". 30-3-104.
"Definite time". 30-3-109.
"Dishonor". 30-3-507.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Negotiation". 30-3-202.
"Note". 30-3-104.
"Notice of dishonor". 30-3-508.
"On demand". 30-3-108.
"Presentment". 30-3-504.
"Protest". 30-3-509.
"Restrictive endorsement". 30-3-205.
"Signature". 30-3-401.

(3) The following definitions in other chapters apply to this chapter:

"Account". 30-4-104.
"Banking day". 30-4-104.
"Clearinghouse". 30-4-104.
"Collecting bank". 30-4-105.
"Customer". 30-4-104.
"Depositary bank". 30-4-105.
"Documentary draft". 30-4-104.
"Intermediary bank". 30-4-105.
"Item". 30-4-104.
"Midnight deadline". 30-4-104.
"Payor bank". 30-4-105.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 3-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-102.

Cross-References

GENERAL

How presentment made, 30-3-504.

DEFINITIONAL

Bank, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Money, 30-1-201.
Person, 30-1-201.

30-3-103. Limitations on scope of chapter. (1) This chapter does not apply to money, documents of title or investment securities.

(2) The provisions of this chapter are subject to the provisions of the Chapter on Bank Deposits and Collections (Chapter 4) and Secured Transactions (Chapter 9).

History: En. Sec. 3-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-103.

Cross-References

GENERAL

Nature of urban renewal bonds, 7-15-4321.

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Money, 30-3-107.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

DEFINITIONAL

Document of title, 30-1-201.
Money, 30-1-201.

30-3-104. Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note". (1) Any writing to be a negotiable instrument within this chapter must:

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other chapters of this code, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable.

History: **En. Sec. 3-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-104.**

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.

Sum certain, 30-3-106.

Money, 30-3-107.

Payable on demand, 30-3-108.

Definite time, 30-3-109.

Payable to order, 30-3-110.

Payable to bearer, 30-3-111.

Terms and omissions not affecting negotiability, 30-3-112.

Signature, 30-3-401.

Signature in ambiguous capacity, 30-3-402.

Signature by authorized representative, 30-3-403.

Instruments not payable to order or to bearer, 30-3-805.

DEFINITIONAL

Bank, 30-1-201.

Bearer, 30-1-201.

Definite time, 30-3-109.

Money, 30-1-201.

On demand, 30-3-108.

Order, 30-3-102.

Promise, 30-3-102.

Signed, 30-1-201.

Term, 30-1-201.

Writing, 30-1-201.

30-3-105. When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

History: En. Sec. 3-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-105.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Order, 30-3-102.
Promise, 30-3-102.

30-3-106. Sum certain. (1) The sum payable is a sum certain even though it is to be paid:

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

History: En. Sec. 3-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-106.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Definite time, 30-3-109.

DEFINITIONAL

Term, 30-1-201.

30-3-107. Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

History: En. Sec. 3-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-107.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — note, 30-3-104.

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Instrument, 30-3-102.
Money, 30-1-201.
Order, 30-3-102.
Promise, 30-3-102.
Purchase, 30-1-201.

30-3-108. Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

History: En. Sec. 3-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-108.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Holder in due course, 30-3-302.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

DEFINITIONAL

Instrument, 30-3-102.

30-3-109. Definite time. (1) An instrument is payable at a definite time if by its terms it is payable:

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

History: En. Sec. 3-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-109.

Cross-References

GENERAL

Option to accelerate at will, 30-1-208.

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Incomplete instruments, 30-3-115.

Ambiguous terms and rules of construction, 30-3-118.

Notice to purchaser, 30-3-304.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Term, 30-1-201.

30-3-110. Payable to order. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be endorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly endorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

History: En. Sec. 3-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-110.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Payable to bearer, 30-3-111.

Instruments payable to two or more persons, 30-3-116.

Instruments payable with words of description, 30-3-117.

Special endorsement — blank endorsement, 30-3-204.

DEFINITIONAL

Bearer, 30-1-201.
Conspicuous, 30-1-201.
Instrument, 30-3-102.
Negotiation, 30-3-202.
Person, 30-1-201.
Term, 30-1-201.

30-3-111. Payable to bearer. An instrument is payable to bearer when by its terms it is payable to:

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

History: En. Sec. 3-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-111.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Payable to order, 30-3-110.

Incomplete instruments, 30-3-115.

Special endorsement — blank endorsement, 30-3-204.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Bearer, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Term, 30-1-201.

30-3-112. Terms and omissions not affecting negotiability. (1) The negotiability of an instrument is not affected by:

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by endorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (30-3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

History: **En. Sec. 3-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-112.**

Cross-References

GENERAL

Waiver of statutory exemptions in unsecured note unenforceable, 25-13-601.

Default judgment, agreements authorizing void, 28-2-709.

Option to accelerate at will, 30-1-208.

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

When promise or order unconditional, 30-3-105.

Definite time, 30-3-109.

Instruments — negotiability and remedies, 71-1-235.

DEFINITIONAL

Draft, 30-3-104.
Instrument, 30-3-102.
On demand, 30-3-108.
Promise, 30-3-102.
Term, 30-1-201.

30-3-113. Seal. An instrument otherwise negotiable is within this chapter even though it is under a seal.

History: **En. Sec. 3-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-113.**

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Instrument, 30-3-102.

30-3-114. Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

History: **En. Sec. 3-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-114.**

Cross-References

GENERAL

Definite time, 30-3-109.

Incomplete instruments, 30-3-115.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

DEFINITIONAL

Instrument, 30-3-102.
Issue, 30-3-102.
On demand, 30-3-108.
Presumed, 30-1-201.
Signature, 30-3-401.

30-3-115. Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (30-3-407), even though the paper was not delivered by the maker or

drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

History: **En. Sec. 3-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-115.**

Cross-References

GENERAL

Payment on demand, 30-3-108.
Date, antedating, postdating, 30-3-114.
Rights of a holder in due course, 30-3-305.
Signature, 30-3-401.
Contract of maker, drawer, and acceptor, 30-3-413.

DEFINITIONAL

Alteration, 30-3-407.
Burden of establishing, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Signed, 30-1-201.

30-3-116. Instruments payable to two or more persons. An instrument payable to the order of two or more persons:

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

History: **En. Sec. 3-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-116.**

Cross-References

GENERAL

Payable to order, 30-3-110.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.

30-3-117. Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him:

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

History: **En. Sec. 3-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-117.**

Cross-References

GENERAL

Notice to purchaser, 30-3-304.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.

30-3-118. Ambiguous terms and rules of construction. The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or endorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with 30-3-604 tenders full payment when the instrument is due.

History: **En. Sec. 3-118, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-118.**

Cross-References

GENERAL

Definite time, 30-3-109.
Date, antedating, postdating, 30-3-114.
Signature in ambiguous capacity, 30-3-402.
Impairment of recourse or of collateral, 30-3-606.

DEFINITIONAL

Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Note, 30-3-104.
Person, 30-1-201.
Promise, 30-3-102.
Signed, 30-1-201.
Term, 30-1-201.

30-3-119. Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

History: **En. Sec. 3-119, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-119.**

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.
Notice to purchaser, 30-3-304.

DEFINITIONAL

Agreement, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Written and writing, 30-1-201.

30-3-120. Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

History: **En. Sec. 3-120, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-120.**

Cross-References

GENERAL

How presentment made, 30-3-504.

DEFINITIONAL

Bank, 30-1-201.
Collecting bank, 30-4-105.
Instrument, 30-3-102.
Presentment, 30-3-504.

30-3-121. Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

History: En. Sec. 3-121, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-121.

Cross-References

GENERAL

Unexcused delay — discharge, 30-3-502.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-4-104.
Bank, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.
Note, 30-3-104.
Order, 30-3-102.

30-3-122. Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues:

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

History: En. Sec. 3-122, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-122.

Cross-References

GENERAL

Ambiguous terms and rules of construction, 30-3-118.

Contract of maker, drawer, and acceptor, 30-3-413.

Contract of endorser — order of liability, 30-3-414.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

DEFINITIONAL

Action, 30-1-201.
Certificate of deposit, 30-3-102.
Dishonor, 30-3-507.
Draft, 30-3-104.
Instrument, 30-3-102.
Note, 30-3-104.
Notice of dishonor, 30-3-508.
On demand, 30-3-108.

30-3-123. Holder's power to sue on overdue negotiable instruments — transfer. A holder of overdue bills of exchange and promissory notes, as described in 30-3-104 may sue all the parties thereto collectively or severally, but if any of the parties thereto who are not primarily liable for the payment tender the amount of principal, interest, and costs thereon, the holder shall transfer the paper. If a judgment be rendered thereon, the holder shall assign the judgment to such party so making the tender, and in case of refusal he may be compelled to do so by summary proceedings instituted for that purpose in the district court of the district in which he resides.

History: En. Sec. 593, C. Civ. Proc. 1895; re-en. Sec. 6500, Rev. C. 1907; re-en. Sec. 9092, R.C.M. 1921; re-en. Sec. 9092, R.C.M. 1935; amd. Sec. 18, Ch. 265, L. 1977; R.C.M. 1947, 93-2830.

Part 2

Transfer and Negotiation

30-3-201. Transfer — right to endorsement. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified endorsement of the transferor. Negotiation takes effect only when the endorsement is made and until that time there is no presumption that the transferee is the owner.

History: En. Sec. 3-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-201.

Cross-References

GENERAL

Assignment of thing in action, defenses and setoff, 27-1-503.

Transfer of nonnegotiable instrument, 28-2-206.

Negotiation, 30-3-202.

Holder in due course, 30-3-302.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Contract of guarantor, 30-3-416.

Payment or satisfaction, 30-3-603.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

Assignment of mortgages, 71-1-207.

DEFINITIONAL

Bearer, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Negotiation, 30-3-202.
Notice, 30-1-201.
Party, 30-1-201.
Presumption, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-3-202. Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.

(2) An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement.

History: En. Sec. 3-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-202.

Cross-References

GENERAL

Endorsement, presumption as to time, 26-1-602.

Transfer — right to endorsement, 30-3-201.

Special endorsement — blank endorsement, 30-3-204.

Contract of guarantor, 30-3-416.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Written, 30-1-201.

30-3-203. Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may endorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

History: En. Sec. 3-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-203.

Cross-References

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-204. Special endorsement — blank endorsement. (1) A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.

(2) An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.

(3) The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.

History: En. Sec. 3-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-204.

Cross-References

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-205. Restrictive endorsements. An endorsement is restrictive which either:

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the endorser or of another person.

History: En. Sec. 3-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-205.

Cross-References

GENERAL

Negotiation, 30-3-202.
Restrictive endorsements, 30-3-205.
Effect of restrictive endorsement, 30-3-206.
Notice to purchaser, 30-3-304.
Conversion of instrument — innocent representative, 30-3-419.
Payment or satisfaction, 30-3-603.
Effect of instructions, 30-4-203.
Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.

30-3-206. Effect of restrictive endorsement. (1) No restrictive endorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an endorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of 30-3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

(4) The first taker under an endorsement for the benefit of the endorser or another person (subparagraph (d) of 30-3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive endorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of 30-3-304).

History: En. Sec. 3-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-206.

Cross-References

GENERAL

Rights of one not holder in due course, 30-3-306.

Conversion of instrument — innocent representative, 30-3-419.

Effect of discharge against holder in due course, 30-3-602.

Payment or satisfaction, 30-3-603.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Effect of instructions, 30-4-203.

Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Bank, 30-1-201.
Depositary bank, 30-3-102, 30-4-105.
Holder in due course, 30-3-302.
Intermediary bank, 30-3-102, 30-4-105.
Negotiation, 30-3-102, 30-3-202.
Payor bank, 30-3-102, 30-4-105.
Restrictive endorsement, 30-3-205.
Transfer, 30-3-201.

30-3-207. Negotiation effective although it may be rescinded. (1) Negotiation is effective to transfer the instrument although the negotiation is:

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

History: En. Sec. 3-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-207.

Cross-References

GENERAL

Negotiation, 30-3-202.

Rights of a holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Negotiation, 30-3-202.
Person, 30-1-201.
Remedy, 30-1-201.

30-3-208. Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any endorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his endorsement has been canceled is discharged as against subsequent holders in due course as well.

History: En. Sec. 3-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-208.

Cross-References

GENERAL

Effect of discharge against holder in due course, 30-3-602.
Payment or satisfaction, 30-3-603.
Cancellation and renunciation, 30-3-605.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.

Part 3

Rights of a Holder

30-3-301. Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in 30-3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

History: En. Sec. 3-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-301.

Cross-References

GENERAL

Holder's power to sue on overdue negotiable instruments — transfer, 30-3-123.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Rights, 30-1-201.

30-3-302. Holder in due course. (1) A holder in due course is a holder who takes the instrument:

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

History: En. Sec. 3-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-302.

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.
Taking for value, 30-3-303.
Notice to purchaser, 30-3-304.
Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.

DEFINITIONAL

Good faith, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Notice of dishonor, 30-3-508.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Value, 30-3-303.

30-3-303. Taking for value. A holder takes the instrument for value:

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

History: En. Sec. 3-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-303.

Cross-References

GENERAL

Holder in due course, 30-3-302.
Consideration, 30-3-408.
Contract of accommodation party, 30-3-415.
Warranties on presentment and transfer, 30-3-417.
When bank gives value for purposes of holder in due course, 30-4-209.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Security interest, 30-1-201.

30-3-304. Notice to purchaser. (1) The purchaser has notice of a claim or defense if:

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

History: En. Sec. 3-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-304.

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.
Other writings affecting instrument, 30-3-119.
Transfer — right to endorsement, 30-3-201.
Effect of restrictive endorsement, 30-3-206.
Holder in due course, 30-3-302.
Alteration, 30-3-407.
Effect of discharge against holder in due course, 30-3-602.

DEFINITIONAL

Accommodation party, 30-3-415.
Agreement, 30-1-201.
Alteration, 30-3-407.
Bank, 30-1-201.
Check, 30-3-104.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Issue, 30-3-102.
Negotiation, 30-3-202.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Promise, 30-3-102.
Purchaser, 30-1-201.
Reasonable time, 30-1-204.
Signed, 30-1-201.
Term, 30-1-201.

30-3-305. Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except:

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

History: En. Sec. 3-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-305.

Cross-References

GENERAL

Incomplete instruments, 30-3-115.
Transfer, right to endorsement, 30-3-201.
Reacquisition, 30-3-208.
Notice to purchaser, 30-3-304.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Alteration, 30-3-407.

Effect of discharge against holder in due course, 30-3-602.

DEFINITIONAL

Contract, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Term, 30-1-201.

30-3-306. Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to:

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (30-3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

History: **En. Sec. 3-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-306.**

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.
Negotiation effective although it may be rescinded, 30-3-207.
Holder in due course, 30-3-302.
Rights of a holder in due course, 30-3-305.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.
Notice to third party, 30-3-803.

DEFINITIONAL

Action, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

30-3-307. Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

History: **En. Sec. 3-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-307.**

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.
Holder in due course, 30-3-302.
Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Signature, 30-3-401.

Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.

DEFINITIONAL

Action, 30-1-201.
Burden of establishing, 30-1-201.
Defendant, 30-1-201.
Genuine, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.

Part 4

Liability of Parties

30-3-401. Signature. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

History: En. Sec. 3-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-401.

Cross-References

GENERAL

Negotiation, 30-3-202.
Wrong or misspelled name, 30-3-203.
Signature in ambiguous capacity, 30-3-402.
Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.
Impostors — signature in name of payee, 30-3-405.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Definition and operation of acceptance, 30-3-410.

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-3-402. Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement.

History: En. Sec. 3-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-402.

Cross-References

GENERAL

Signature, 30-3-401.

DEFINITIONAL

Instrument, 30-3-102.
Signature, 30-3-401.

30-3-403. Signature by authorized representative. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument:

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

History: **En. Sec. 3-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-403.**

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

Representative, 30-1-201.

Signature, 30-3-401.

30-3-404. Unauthorized signatures. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

History: **En. Sec. 3-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-404.**

Cross-References

GENERAL

Facsimile signatures or seals of public officers, misuse, 2-16-114.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Issuing a bad check, 45-6-316.

Forgery, 45-6-325.

DEFINITIONAL

Good faith, 30-1-201.

Instrument, 30-3-102.

Person, 30-1-201.

Rights, 30-1-201.

Signature, 30-3-401.

Signed, 30-1-201.

Unauthorized signature, 30-1-201.

Value, 30-3-303.

30-3-405. Impostors — signature in name of payee. (1) An endorsement by any person in the name of a named payee is effective if:

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so endorsing.

History: **En. Sec. 3-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-405.**

Cross-References

GENERAL

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Forgery, 45-6-325.

DEFINITIONAL

Instrument, 30-3-102.
Issue, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-406. Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

History: En. Sec. 3-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-406.

Cross-References

GENERAL

Signature, 30-3-401.
Unauthorized signatures, 30-3-404.
Alteration, 30-3-407.

DEFINITIONAL

Alteration, 30-3-407.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Person, 30-3-201.
Unauthorized signature, 30-1-201.

30-3-407. Alteration. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

History: En. Sec. 3-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-407.

Cross-References

GENERAL

Altered bill or note, limitation on action because of banks' payment, 27-2-213.
Incomplete instruments, 30-3-115.
Notice to purchaser, 30-3-304.
Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Effect of discharge against holder in due course, 30-3-602.
When bank may charge customer's account, 30-4-401.

DEFINITIONAL

Contracts, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-408. Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (30-3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this code under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

History: En. Sec. 3-408, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-408.

Cross-References

GENERAL

What contracts must be in writing, 28-2-903.

Taking for value, 30-3-303.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signature, defenses, and due course, 30-3-307.

DEFINITIONAL

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Person, 30-1-201.

Rights, 30-1-201.

30-3-409. Draft not an assignment. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

History: En. Sec. 3-409, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-409.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Certification of a check, 30-3-411.

Acceptance varifying draft, 30-3-412.

Contract of accommodation party, 30-3-415.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Acceptance, 30-3-410.

Check, 30-3-104.

Contract, 30-1-201.

Draft, 30-3-104.

Instrument, 30-3-102.

Letter of credit, 30-5-103.

30-3-410. Definition and operation of acceptance. (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

History: En. Sec. 3-410, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-410.

Cross-References

GENERAL

What constitutes acceptance of goods, 30-2-606.

Signature, 30-3-401.

Draft not an assignment, 30-3-409.

Certification of a check, 30-3-411.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

Finality of payment or acceptance, 30-3-418.

Conversion of instrument — innocent representative, 30-3-419.

DEFINITIONAL

Delivery, 30-1-201.

Dishonor, 30-3-507.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Notification, 30-1-201.

30-3-411. Certification of a check. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior endorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper endorsement. If it does so the drawer is discharged.

History: En. Sec. 3-411, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-411.

Cross-References

GENERAL

Draft not an assignment, 30-3-409.
Definition and operation of acceptance, 30-3-410.
Acceptance varying draft, 30-3-412.
Contract of maker, drawer, and acceptor, 30-3-413.
Warranties on presentment and transfer, 30-3-417.
Finality of payment or acceptance, 30-3-418.
Certified checks, 32-1-441.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Check, 30-3-104.
Holder, 30-1-201.

30-3-412. Acceptance varying draft. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and endorser who does not affirmatively assent is discharged.

History: En. Sec. 3-412, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-412.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.
Contract of maker, drawer, and acceptor, 30-3-413.
How presentment made, 30-3-504.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Dishonor, 30-3-507.
Draft, 30-3-104.
Holder, 30-1-201.
Term, 30-1-201.
Written, 30-1-201.

30-3-413. Contract of maker, drawer and acceptor. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to 30-3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse.

History: En. Sec. 3-413, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-413.

Cross-References

GENERAL

Treble damages for issuing bad check, 27-1-717.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

Finality of payment or acceptance, 30-3-418.

DEFINITIONAL

Contract, 30-1-201.
Dishonor, 30-3-507.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Protest, 30-3-509.

30-3-414. Contract of endorser — order of liability. (1) Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument.

History: **En. Sec. 3-414, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-414.**

Cross-References

GENERAL

Ambiguous terms and rules of construction, 30-3-118.

Contract of maker, drawer, and acceptor, 30-3-413.

Warranties on presentment and transfer, 30-3-417.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

DEFINITIONAL

Contract, 30-1-201.
Dishonor, 30-3-507.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Presumed, 30-1-201.
Protest, 30-3-509.
Signature, 30-3-401.

30-3-415. Contract of accommodation party. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An endorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

History: **En. Sec. 3-415, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-415.**

Cross-References

GENERAL

Rights of a holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Consideration, 30-3-408.

Payment or satisfaction, 30-3-603.
Tender of payment, 30-3-604.
Impairment of recourse or of collateral, 30-3-606.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.
Presentment, 30-3-504.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-416. Contract of guarantor. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

History: En. Sec. 3-416, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-416.

Cross-References

GENERAL

What contracts must be in writing, 28-2-903.
Formal requirements — Statute of Frauds, 30-2-201.
Negotiation, 30-3-202.
Contract of accommodation party, 30-3-415.
Statute of Frauds, 30-8-319.

DEFINITIONAL

Holder, 30-1-201.
Insolvent, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Presumption, 30-1-201.
Protest, 30-3-509.
Signature, 30-3-401.
Written, 30-1-201.

30-3-417. Warranties on presentment and transfer. (1) Any person who obtains payment or acceptance and any prior transfer or warrants to a person who in good faith pays or accepts that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

History: En. Sec. 3-417, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-417.

Cross-References

GENERAL

Transfer, right to endorsement, 30-3-201.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Contract of endorser — order of liability, 30-3-414.

Finality of payment or acceptance, 30-3-418.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

Warranty on sale of written instrument, 30-11-220.

DEFINITIONAL

Acceptance, 30-3-410.
Alteration, 30-3-407.
Bank, 30-1-201.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.
Signature, 30-3-401.
Term, 30-1-201.

30-3-418. Finality of payment or acceptance. Except for recovery of bank payments as provided in the Chapter on Bank Deposits and Collections (Chapter 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

History: **En. Sec. 3-418, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-418.**

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.

Holder in due course, 30-3-302.

Taking for value, 30-3-303.

Notice to purchaser, 30-3-304.

Warranties on presentment and transfer, 30-3-417.

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-4-104.
Bank, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Presentment, 30-3-504.

30-3-419. Conversion of instrument — innocent representative. (1) An instrument is converted when:

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged endorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this code concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (30-3-205 and 30-3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.

History: **En. Sec. 3-419, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-419.**

Cross-References

GENERAL

Draft not an assignment, 30-3-409.

Definition and operation of acceptance, 30-3-410.

Certification of a check, 30-3-411.

Warranties on presentment and transfer, 30-3-417.

Payment or satisfaction, 30-3-603

DEFINITIONAL

Acceptance, 30-3-410.
Action, 30-1-201.
Bank, 30-1-201.
Collecting bank, 30-3-102, 30-4-105.
Depositary bank, 30-3-102, 30-4-105.
Good faith, 30-1-201.
Instrument, 30-3-102.
Intermediary bank, 30-3-102, 30-4-105.
On demand, 30-3-108.
Person, 30-1-201.
Presumed, 30-1-201.
Representative, 30-1-201.

Part 5

Presentment, Notice of Dishonor, and Protest

30-3-501. When presentment, notice of dishonor, and protest necessary or permissible. (1) Unless excused (30-3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and endorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any endorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in 30-3-502(1)(b).

(2) Unless excused (30-3-511):

(a) notice of any dishonor is necessary to charge any endorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in 30-3-502(1)(b).

(3) Unless excused (30-3-511) protest of any dishonor is necessary to charge the drawer and endorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an endorser who has endorsed an instrument after maturity.

History: En. Sec. 3-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-501.

Cross-References

GENERAL

Construction of the terms of a notice, 1-4-108.

Duty of agent employed to collect negotiable instrument, 28-10-303.

Payable on demand, 30-3-108.

Contract of maker, drawer, and acceptor, 30-3-413.

Contract of endorser — order of liability, 30-3-414.

Time of presentment, 30-3-503.

How presentment made, 30-3-504.

Rights of party to whom presentment is made, 30-3-505.

Time allowed for acceptance or payment, 30-3-506.

Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.

Notice of dishonor, 30-3-508.

Protest — noting for protest, 30-3-509.

Evidence of dishonor and notice of dishonor, 30-3-510.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Certificate of deposit, 30-3-104.
Dishonor, 30-3-507.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Presentment, 30-3-504.
Protest, 30-3-509.
Secondary party, 30-3-102.
Signature, 30-3-401.

30-3-502. Unexcused delay — discharge. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) any endorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or endorser is discharged.

History: En. Sec. 3-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-502.

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Protest — noting for protest, 30-3-509.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

DEFINITIONAL

Bank, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Insolvent, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presentment, 30-3-504.
Protest, 30-3-509.
Rights, 30-1-201.
Signature, 30-3-401.
Written, 30-1-201.

30-3-503. Time of presentment. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, 7 days after his endorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

History: **En. Sec. 3-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-503.**

Cross-References

GENERAL

Notice to purchaser, 30-3-304.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Unexcused delay — discharge, 30-3-502.

Rights of party to whom presentment is made, 30-3-505.

Time allowed for acceptance or payment, 30-3-506.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Banking day, 30-4-104.
Check, 30-3-104.
Draft, 30-3-104.
Instrument, 30-3-102.
Issue, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Presentment, 30-3-504.
Presumed, 30-1-201.
Reasonable time, 30-1-204.
Secondary party, 30-3-102.
Usage of trade, 30-1-205.

30-3-504. How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made:

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearinghouse; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in 30-4-210 presentment may be made in the manner and with the result stated in that section.

History: **En. Sec. 3-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-504.**

Cross-References

GENERAL

Acceptance varying draft, 30-3-412.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Unexcused delay — discharge, 30-3-502.

Rights of party to whom presentment is made, 30-3-505.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.

Clearinghouse, 30-4-104.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.

30-3-505. Rights of party to whom presentment is made. (1) The party to whom presentment is made may without dishonor require:

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

History: En. Sec. 3-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-505.

Cross-References

GENERAL

How presentment made, 30-3-504.

Time allowed for acceptance or payment, 30-3-506.

Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties, 30-4-210.

DEFINITIONAL

Acceptance, 30-3-410.
Dishonor, 30-3-507.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Presentment, 30-3-504.
Reasonable time, 30-1-204.
Signed, 30-1-201.

30-3-506. Time allowed for acceptance or payment. (1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

History: En. Sec. 3-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-506.

Cross-References

GENERAL

Finality of payment or acceptance, 30-3-418.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

DEFINITIONAL

Acceptance, 30-3-410.
Dishonor, 30-3-507.
Documentary draft, 30-3-102, 30-4-104.
Instrument, 30-3-102.
Letter of credit, 30-5-103.
Party, 30-1-201.
Presentment, 30-3-504.

30-3-507. Dishonor — holder's right of recourse — term allowing re-presentment. (1) An instrument is dishonored when:

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (30-4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and endorsers.

(3) Return of an instrument for lack of proper endorsement is not dishonor.

(4) A term in a draft or an endorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

History: En. Sec. 3-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-507.

Cross-References

GENERAL

Rights of a holder, 30-3-301.
Certification of a check, 30-3-411.
Time of presentment, 30-3-503.
How presentment made, 30-3-504.
Rights of party to whom presentment is made, 30-3-505.
Notice of dishonor, 30-3-508.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Presentment, 30-3-504.
Protest, 30-3-509.
Right, 30-1-201.
Seasonably, 30-1-204.
Secondary party, 30-3-102.
Term, 30-1-201.

30-3-508. Notice of dishonor. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

History: En. Sec. 3-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-508.

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Customer, 30-4-104.
Dishonor, 30-3-507.
Holder, 30-1-201.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Midnight deadline, 30-4-104.
Notifies, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Send, 30-1-201.
Written and writing, 30-1-201.

30-3-509. Protest — noting for protest. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

History: En. Sec. 3-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-509.

Cross-References

Notaries — powers and duties — protest, 1-5-416.

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Notice of dishonor, 30-3-508.

Evidence of dishonor and notice of dishonor, 30-3-510.

Waived or excused presentment, protest, or notice of dishonor or delay therein, 30-3-511.

Lost, destroyed, or stolen instruments, 30-3-804.

30-3-510. Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

History: **En. Sec. 3-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-510.**

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.
Notice of dishonor, 30-3-508.

DEFINITIONAL

Acceptance, 30-3-410.
Collecting bank, 30-4-105.
Dishonor, 30-3-507.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presumption, 30-1-201.
Protest, 30-3-509.
Writing, 30-1-201.

30-3-511. Waived or excused presentment, protest or notice of dishonor or delay therein. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an endorser it binds him only.

History: **En. Sec. 3-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-511.**

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.
Unexcused delay — discharge, 30-3-502.
Time of presentment, 30-3-503.
Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.
Protest — noting for protest, 30-3-509.

DEFINITIONAL

Acceptance, 30-3-410.
Dishonor, 30-3-507.
Documentary draft, 30-4-104.
Draft, 30-3-104.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Notice of dishonor, 30-3-508.

Party, 30-1-201.
Presentment, 30-3-504.
Protest, 30-3-509.
Right, 30-1-201.

Part 6

Discharge

30-3-601. Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:

(a) payment or satisfaction (30-3-603); or
(b) tender of payment (30-3-604); or
(c) cancellation or renunciation (30-3-605); or
(d) impairment of right of recourse or of collateral (30-3-606); or
(e) reacquisition of the instrument by a prior party (30-3-208); or
(f) fraudulent and material alteration (30-3-407); or
(g) certification of a check (30-3-411); or
(h) acceptance varying a draft (30-3-412); or
(i) unexcused delay in presentment or notice of dishonor or protest (30-3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) reacquires the instrument in his own right; or
(b) is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (30-3-606).

History: En. Sec. 3-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-601.

Cross-References

GENERAL

Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Contract of accommodation party, 30-3-415.
Protest — noting for protest, 30-3-509.
Effect of discharge against holder in due course, 30-3-602.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Alteration, 30-3-407.
Certification, 30-3-411.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.
Money, 30-1-201.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Presentment, 30-3-504.
Rights, 30-1-201.

30-3-602. Effect of discharge against holder in due course. No discharge of any party provided by this chapter is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

History: En. Sec. 3-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-602.

Cross-References

GENERAL

Holder in due course, 30-3-302.
Notice to purchaser, 30-3-304.
Rights of a holder in due course, 30-3-305.
Discharge of parties, 30-3-601.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.

30-3-603. Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (30-3-201).

History: En. Sec. 3-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-603.

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.
Reacquisition, 30-3-208.
Rights of a holder, 30-3-301.
Rights of one not holder in due course, 30-3-306.
Contract of accommodation party, 30-3-415.
Discharge of parties, 30-3-601.
Tender of payment, 30-3-604.
Impairment of recourse or of collateral, 30-3-606.

DEFINITIONAL

Action, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Order, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

30-3-604. Tender of payment. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

History: En. Sec. 3-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-604.

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.
Unexcused delay — discharge, 30-3-502.
How presentment made, 30-3-504.
Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
On demand, 30-3-108.
Party, 30-1-201.
Right, 30-1-201.

30-3-605. Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party:

(a) in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

History: En. Sec. 3-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-605.

Cross-References

GENERAL

Discharge of parties, 30-3-601.

Effect of discharge against holder in due course, 30-3-602.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-606. Impairment of recourse or of collateral. (1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

History: En. Sec. 3-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-606.

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.

Rights and duties when collateral is in secured party's possession, 30-9-207.

DEFINITIONAL

Agreement, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

Part 7

Advice of International Sight Draft

30-3-701. Letter of advice of international sight draft. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

History: **En. Sec. 3-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-701.**

Cross-References

GENERAL

Draft not an assignment, 30-3-409.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Credit, 30-5-103.
Draft, 30-3-104.
Genuine, 30-1-201.
Holder, 30-1-201.

Part 8

Miscellaneous

30-3-801. Drafts in a set. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, endorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (30-4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

History: **En. Sec. 3-801, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-801.**

Cross-References

GENERAL

Terms and omissions not affecting negotiability, 30-3-112.

DEFINITIONAL

Acceptance, 30-3-410.
Check, 30-3-104.
Draft, 30-3-104.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Honor, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

30-3-802. Effect of instrument on obligation for which it is given. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation:

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

History: En. Sec. 3-802, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-802.

Cross-References

GENERAL

Certification of a check, 30-3-411.
Time of presentment, 30-3-503.
Discharge of parties, 30-3-601.

DEFINITIONAL

Action, 30-1-201.
Bank, 30-1-201.
Check, 30-3-104.
Dishonor, 30-3-507.
Good faith, 30-1-201.
Instrument, 30-3-102.
On demand, 30-3-108.
Presentment, 30-3-504.

30-3-803. Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this chapter he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this chapter. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

History: En. Sec. 3-803, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-803.

Cross-References

GENERAL

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Action, 30-1-201.
Defendant, 30-1-201.
Instrument, 30-3-102.
Notifies, 30-1-201.
Person, 30-1-201.
Right, 30-1-201.
Seasonably, 30-1-204.
Written, 30-1-201.

30-3-804. Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

History: En. Sec. 3-804, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-804.

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Action, 30-1-201.
Defendant, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Term, 30-1-201.

30-3-805. Instruments not payable to order or to bearer. This chapter applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this chapter but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

History: **En. Sec. 3-805, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-805.**

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Bearer, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Term, 30-1-201.

CHAPTER 4

UNIFORM COMMERCIAL CODE BANK DEPOSITS AND COLLECTIONS

Part 1 — General Provisions and Definitions

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30-4-403. Customer's right to stop payment — burden of proof of loss.
30-4-404. Bank not obligated to pay check more than six months old.
30-4-405. Death or incompetence of customer.
30-4-406. Customer's duty to discover and report unauthorized signature or alteration.
30-4-407. Payor bank's right to subrogation on improper payment.

Part 5 — Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.
30-4-502. Presentment of "on arrival" drafts.
30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.
30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses.

Chapter Cross-References

Laws not repealed — branch banking, 30-1-111.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

General Provisions and Definitions

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

History: En. Sec. 4-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-101.

30-4-102. Applicability. (1) To the extent that items within this chapter are also within the scope of Chapters 3 and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of Chapter 3 but the provisions of Chapter 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action

or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

History: **En. Sec. 4-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-102.**

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Limitations on scope of chapter, 30-3-103.

Bank deposits and collections, Title 30, ch. 4.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Notice to purchaser of adverse claims, 30-8-304.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Secured transactions, sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Bank, 30-1-201.

Branch, 30-1-201.

Item, 30-4-104.

30-4-103. Variation by agreement — measure of damages — certain action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this chapter, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

History: **En. Sec. 4-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-103.**

Cross References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Responsibility for collection — when action seasonable, 30-4-202.

DEFINITIONAL

Bank, 30-1-201.

Good faith, 30-1-201.

Item, 30-4-104.

Usage, 30-1-205.

30-4-104. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Collecting bank". 30-4-105.
"Depositary bank". 30-4-105.
"Intermediary bank". 30-4-105.
"Payor bank". 30-4-105.
"Presenting bank". 30-4-105.
"Remitting bank". 30-4-105.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.
"Certificate of deposit". 30-3-104.
"Certification". 30-3-411.
"Check". 30-3-104.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Notice of dishonor". 30-3-508.
"Presentment". 30-3-504.
"Protest". 30-3-509.
"Secondary party". 30-3-102.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: **En. Sec. 4-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-104.**

Cross-References

DEFINITIONAL

Bank, 30-1-201.
Documents, 30-1-201.
Money, 30-1-201.
Negotiable, 30-3-104.
Notice, 30-1-201.
Person, 30-1-201.
Securities, 30-8-102.

30-4-105. "Depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank" — "remitting bank". In this chapter unless the context otherwise requires:

(a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

History: En. Sec. 4-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-105.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.
Instruments "payable through" bank, 30-3-120.
Instruments payable at bank, 30-3-121.

DEFINITIONAL

Bank, 30-1-201
Customer, 30-4-104.
Item, 30-4-104.

30-4-106. Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this chapter and under Chapter 3.

History: En. Sec. 4-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-106.

Cross-References

GENERAL

Laws not repealed, 30-1-111.
How presentment made, 30-3-504.
Applicability (bank deposits and collections), 30-4-102.

DEFINITIONAL

Bank, 30-1-201
Branch, 30-1-201.

30-4-107. Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History: En. Sec. 4-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-107.

Cross-References

DEFINITIONAL

Afternoon, 30-4-104.
Bank, 30-1-201.
Banking day, 30-4-104.
Item, 30-4-104.
Money, 30-1-201.

30-4-108. Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this code for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

History: En. Sec. 4-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-108.

Cross-References

GENERAL

Limitations on scope of chapter, 30-3-103.

Time of presentment, 30-3-503.

Time allowed for acceptance or payment, 30-3-506.

Applicability (bank deposits and collections), 30-4-102.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Responsibility for collection — when action seasonable, 30-4-202.

Right of charge-back or refund, 30-4-212.

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Good faith, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.

30-4-109. Process of posting. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;
(b) ascertaining that sufficient funds are available;
(c) affixing a "paid" or other stamp;
(d) entering a charge or entry to a customer's account;
(e) correcting or reversing an entry or erroneous action with respect to the item.

History: En. Sec. 4-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-109.

Cross-References

GENERAL

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

When items subject to notice, stop order, legal process or setoff, order in which items may be charged or certified, 30-4-303.

DEFINITIONAL

Account, 30-4-104.
Customer, 30-4-104.
Item, 30-4-104.
Payor bank, 30-4-105.

Part 2

Collection of Items Depositary and Collecting Banks

30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter —

item endorsed "pay any bank". (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of 30-4-211 and 30-4-212 and 30-4-213) the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

History: **En. Sec. 4-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-201.**

Cross-References

GENERAL

Effect of restrictive endorsement, 30-3-206.
Reacquisition, 30-3-208.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Transfer of items between banks, 30-4-206.
Insolvency and preference, 30-4-214.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Endorsements, 30-3-202, 30-3-204 through 30-3-206.
Holder, 30-1-201.
Item, 30-4-104.
Person, 30-1-201.
Settle, 30-4-104.

30-4-202. Responsibility for collection — when action seasonable. (1) A collecting bank must use ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of 30-4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

History: **En. Sec. 4-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-202.**

Cross-References

GENERAL

Obligation of good faith, 30-1-203.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Time of receipt of items, 30-4-107.
Delays, 30-4-108.
Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Collecting bank, 30-4-105.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Presentment, Title 30, ch. 3, part 5.
Protest, 30-3-509.

30-4-203. Effect of instructions. Subject to the provisions of Chapter 3 concerning conversion of instruments (30-3-419) and the provisions of both Chapter 3 and this chapter concerning restrictive endorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

History: **En. Sec. 4-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-203.**

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.
Effect of restrictive endorsement, 30-3-206.
Payment or satisfaction, 30-3-603.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Collecting bank, 30-4-105.
Restrictive endorsements, 30-3-205.

30-4-204. Methods of sending and presenting — sending direct to payor bank. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send:

(a) any item direct to the payor bank;

(b) any item to any nonbank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

History: **En. Sec. 4-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-204.**

Cross-References

GENERAL

How presentment made, 30-3-504.
Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties, 30-4-210.
Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.
Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Collecting bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.

30-4-205. Supplying missing endorsement — no notice from prior endorsement. (1) A depositary bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's endorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor.

History: **En. Sec. 4-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-205.**

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.
Effect of restrictive endorsement, 30-3-206.
Conversion of instrument — innocent representative, 30-3-419.
Payment or satisfaction, 30-3-603.
Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.
Restrictive endorsements, 30-3-205.

30-4-206. Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

History: **En. Sec. 4-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-206.**

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.
Negotiation, 30-3-202.

DEFINITIONAL

Bank, 30-1-201.
Item, 30-4-104.

30-4-207. Warranties of customer and collecting bank on transfer or presentment of items — time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item. In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

History: En. Sec. 4-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-207.

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.

Contract of endorser — order of liability, 30-3-414.

Warranties on presentment and transfer, 30-3-417.

Finality of payment or acceptance, 30-3-418.

Transfer between banks, 30-4-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

When bank gives value for purposes of holder in due course, 30-4-209.

Payor bank's responsibility for late return of item, 30-4-302.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Presentment, 30-3-504.
Protest, 30-3-509.
Unauthorized signature, 30-1-201.

30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (30-9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History: En. Sec. 4-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-208; amd. Sec. 7, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (3)(a), deleted "subsection (1)(b) of" before "30-9-203)".

Cross-References

GENERAL

Holder in due course, 30-3-302.

Taking for value, 30-3-303.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

When bank gives value for purposes of holder in due course, 30-4-209.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Bank, 30-1-201.
Item, 30-4-104.
Security interest, 30-1-201.
Settlement, 30-4-104.

30-4-209. When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

History: En. Sec. 4-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-209.

Cross-References

GENERAL

Taking for value, 30-3-303.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

DEFINITIONAL

Bank, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Security interest, 30-1-201.

30-4-210. Presentment by notice of item not payable by, through or at a bank — liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under 30-3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under 30-3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

History: **En. Sec. 4-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-210.**

Cross-References

GENERAL

When presentment, notice of dishonor, and protest necessary or permissible, 30-3-501.

Unexcused delay — discharge, 30-3-502.

Time of presentment, 30-3-503.

How presentment made, 30-3-504.

Time allowed for acceptance or payment, 30-3-506.

Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.

Notice of dishonor, 30-3-508.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Party, 30-1-201.
Presentment, 30-3-504.
Secondary party, 30-3-102.
Send, 30-1-201.

30-4-211. Media of remittance — provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item:

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearinghouse or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

History: En. Sec. 4-211, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-211.

Cross-References

GENERAL

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Money, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Remitting bank, 30-4-105.
Settle, 30-4-104.

30-4-212. Right of charge-back or refund. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) Within the time and manner prescribed by this section and 30-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge-back is not affected by:

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History: En. Sec. 4-212, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-212.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Money, 30-3-107.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Bank's liability to customer for wrongful dishonor, 30-4-402.

DEFINITIONAL

Account, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.
Suspension of payment, 30-4-104.

30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement. Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of 30-4-211, subsection (2) of 30-4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

History: En. Sec. 4-213, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-213.

Cross-References

GENERAL

Finality of payment or acceptance, 30-3-418.

Time of receipt of items, 30-4-107.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified, 30-4-303.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Money, 30-1-201.
Notice, 30-1-201.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Settlement, 30-4-104.

30-4-214. Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of 30-4-211, subsections (1)(d), (2) and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

History: En. Sec. 4-214, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-214.

Cross-References

Severability, 30-1-108.

Deposits in insolvent banks, 32-1-504.

Order of payment when bank liquidated, 32-1-534.

Part 3

Collection of Items — Payor Banks

30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

History: En. Sec. 4-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-301.

Cross-References

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.

30-4-302. Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

History: En. Sec. 4-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-302.

Cross-References

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.

Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Properly payable, 30-4-104.
Settle, 30-4-104.

30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified. (1) Any knowledge, notice or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1)(d) of 30-4-213 and 30-4-302 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

History: En. Sec. 4-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-303.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Certification of a check, 30-3-411.

Customer's right to stop payment — burden of proof of loss, 30-4-403.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-4-104.
Agreement, 30-1-201.
Certification, 30-3-411.
Clearinghouse, 30-4-104.
Customer, 30-4-104.
Item, 30-4-104.
Notice, 30-1-201.
Payor bank, 30-4-105.
Settle, 30-4-104.

Part 4

Relationship Between Payor Bank and Its Customer

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-401. When bank may charge customer's account. (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original tenor of his altered item; or

(b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History: **En. Sec. 4-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-401.**

Cross-References

GENERAL

Incomplete instruments, 30-3-115.

Alteration, 30-3-407.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.

Bank, 30-1-201.

Customer, 30-4-104.

Good faith, 30-1-201.

Holder, 30-1-201.

Item, 30-4-104.

Properly payable, 30-4-104.

30-4-402. Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

History: **En. Sec. 4-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-402.**

Cross-References

DEFINITIONAL

Bank, 30-1-201.

Customer, 30-4-104.

Item, 30-4-104.

30-4-403. Customer's right to stop payment — burden of proof of loss. (1) Subject to 27-1-717, a customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in 30-4-303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only 6 months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

History: **En. Sec. 4-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-403; amd. Sec. 2, Ch. 557, L. 1985.**

Compiler's Comments

1985 Amendment: At beginning of (1) inserted "Subject to 27-1-717".

Cross-References

GENERAL

Instruments payable at bank, 30-3-121.

Rights of a holder in due course, 30-3-305.

Certification of a check, 30-3-411.

Contract of maker, drawer, and acceptor, 30-3-413.

Finality of payment or acceptance, 30-3-418.

Payment or satisfaction, 30-3-603.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Death or incompetence of customer, 30-4-405.
Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Burden of establishing, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.
Send, 30-1-201.

30-4-404. Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History: En. Sec. 4-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-404.

Cross-References

GENERAL

Certification of a check, 30-3-411.
Contract of maker, drawer, and acceptor, 30-3-413.
Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Good faith, 30-1-201.
Presentment, 30-3-504.

30-4-405. Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

History: En. Sec. 4-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-405.

Cross-References

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Certification, 30-3-411.
Check, 30-3-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.

30-4-406. Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized endorsement is precluded from asserting against the bank such unauthorized signature or endorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

History: **En. Sec. 4-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-406.**

Cross-References

GENERAL

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Warranties on presentment and transfer, 30-3-417.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

DEFINITIONAL

Alteration, 30-3-407.
Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Endorsement, 30-3-204.
Good faith, 30-1-201.
Item, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Unauthorized signature, 30-1-201.

30-4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

History: **En. Sec. 4-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-407.**

Cross-References

GENERAL

Drafts in a set, 30-3-801.

Customer's right to stop payment — burden of proof of loss, 30-4-403.

DEFINITIONAL

Holder, 30-1-201.

Holder in due course, 30-3-302.

Item, 30-4-104.

Payor bank, 30-4-105.

Part 5

Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History: **En. Sec. 4-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-501.**

Cross-References

GENERAL

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

Methods of sending and presenting — sending direct to payor bank, 30-4-204.

Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties, 30-4-210.

Availability of credit in portions — presenter's reservation of lien or claim, 30-5-110.

Warranties on transfer and presentment, 30-5-111.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Indemnities, 30-5-113.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

30-4-502. Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

History: **En. Sec. 4-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-502.**

Cross-References

GENERAL

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

DEFINITIONAL

Collecting bank, 30-4-105.

30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need. Unless otherwise instructed and except as provided in Chapter 5 a bank presenting a documentary draft:

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

History: **En. Sec. 4-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-503.**

Cross-References

GENERAL

When documents deliverable on acceptance — when on payment, 30-2-514.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Letters of credit, Title 30, ch. 5, particularly 30-5-109 through 30-5-114.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

Presenting bank, 30-4-105.

30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

History: **En. Sec. 4-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-504.**

Cross-References

GENERAL

Seller's resale including contract for resale, 30-2-706.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

Presenting bank, 30-4-105.

CHAPTER 5

UNIFORM COMMERCIAL CODE
LETTERS OF CREDIT

Part 1 — Letters of Credit

Section

30-5-101. Short title.
30-5-102. Scope.
30-5-103. Definitions.
30-5-104. Formal requirement — signing.
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30-5-107. Advice of credit — confirmation — error in statement of terms.
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30-5-116. Transfer and assignment.
30-5-117. Insolvency of bank holding funds for documentary credit.

Part 1

Letters of Credit

Part Cross-References

Acceptance and issuance of drafts and letters of credit, 32-1-437.

30-5-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

History: **En. Sec. 5-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-101.**

Cross-References

DEFINITIONAL

Definition and operation of acceptance, 30-3-410.

30-5-102. Scope. (1) This chapter applies:

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this code or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this chapter.

History: **En. Sec. 5-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-102.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Banks — issuance and acceptance of drafts and letters of credit, 32-1-437.

DEFINITIONAL

Agreement, 30-1-201.

Bank, 30-1-201.
Conspicuous, 30-1-201.
Credit, 30-5-103.
Documentary draft, 30-5-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Honor, 30-1-201.
Person, 30-1-201.

30-5-103. Definitions. (1) In this chapter unless the context otherwise requires:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (30-5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Notation of credit". 30-5-108.

"Presenter". 30-5-112(3).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "acceptance". 30-3-410.

"Contract for sale". 30-2-106.

"Draft". 30-3-104.

"Holder in due course". 30-3-302.

"Midnight deadline". 30-4-104.

"Security". 30-8-102.

(4) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 5-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-103.

Cross-References

GENERAL

General provisions, Title 30, ch. 1.

Supplementary general principles of law applicable, 30-1-103.

Course of dealing and usage of trade, 30-1-205.

Sales, Title 30, ch. 2.

"Letter of credit" term — "confirmed credit", 30-2-325.

Commercial paper, Title 30, ch. 3.

Time and effect of establishment of credit, 30-5-106.
Advice of credit — confirmation — error in statement of terms, 30-5-107.
Issuer's obligation to its customer, 30-5-109.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Investment securities, Title 30, ch. 8.
Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Agreement, 30-1-201.
Bank, 30-1-201.
Document of title, 30-1-201.
Gives notification, 30-1-201.
Honor, 30-1-201.
Person, 30-1-201.

30-5-104. Formal requirement — signing. (1) Except as otherwise required in subsection (1)(c) of 30-5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

History: En. Sec. 5-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-104.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.
Modification, rescission, and waiver, 30-2-209.

DEFINITIONAL

Confirming bank, 30-5-103.
Credit, 30-5-103.
Issuer, 30-5-103.
Signed, 30-1-201.
Telegram, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-5-105. Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

History: En. Sec. 5-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-105.

Cross-References

DEFINITIONAL

Credit, 30-5-103.
Term, 30-1-201.

30-5-106. Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original

credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

History: En. Sec. 5-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-106.

Cross-References

GENERAL

"Letter of credit" term — "confirmed credit", 30-2-325.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103
Customer, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.
Notice, 30-1-201.
Person, 30-1-201.
Receive notice, 30-1-201.
Send, 30-1-201.
Written, 30-1-201.

30-5-107. Advice of credit — confirmation — error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

History: En. Sec. 5-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-107.

Cross-References

GENERAL

Issuer's obligation to its customer, 30-5-109.

DEFINITIONAL

Bank, 30-1-201.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.

30-5-108. "Notation credit" — exhaustion of credit. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit:

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit:

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

History: **En. Sec. 5-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-108.**

Cross-References

GENERAL

Drafts in a set, 30-3-801.

Availability of credit in portions — presenter's reservation of lien or claim, 30-5-110.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Good faith, 30-1-201.
Honor, 30-1-201.
Issuer, 30-5-103.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Signed, 30-1-201.

30-5-109. Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge.

History: **En. Sec. 5-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-109.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Advice of credit — confirmation — error in statement of terms, 30-5-107.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Bank, 30-1-201.
Beneficiary, 30-1-201.
Branch, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Issuer, 30-5-103.
Knowledge, 30-1-201.
Person, 30-1-201.
Term, 30-1-201.

30-5-110. Availability of credit in portions — presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

History: En. Sec. 5-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-110.

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.

"Letter of credit" term — "confirmed credit", 30-2-325.

"Notation credit" — exhaustion of credit, 30-5-108.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103.
Document, 30-5-103.
Documentary draft, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Person, 30-1-201.

30-5-111. Warranties on transfer and presentment. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Chapter 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Chapters 7 and 8.

History: En. Sec. 5-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-111.

Cross-References

GENERAL

Warranties on presentment and transfer, 30-3-417.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

Transfer and assignment, 30-5-116.

Warranties on negotiation or transfer of receipt or bill, 30-7-507.

Warranties of collecting bank as to documents, 30-7-508.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

DEFINITIONAL

Advising bank, 30-5-103.
Bank, 30-1-201.
Beneficiary, 30-5-103.
Collecting bank, 30-4-105.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Documentary draft, 30-5-103.
Draft, 30-3-104.
Party, 30-1-201.

30-5-112. Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter". (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto. Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

History: En. Sec. 5-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-112.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Time allowed for acceptance or payment, 30-3-506.

Dishonor — holder's right of recourse — term allowing re-presentment, 30-3-507.

Bank deposits and collections, Title 30, ch. 4.

Responsibility for collection — when action seasonable, 30-4-202.

Payor bank's responsibility for late return of item, 30-4-302.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Issuer's obligation to its customer, 30-5-109.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

DEFINITIONAL

Bank, 30-1-201.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Documentary draft, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.
Send, 30-1-201.

30-5-113. Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

History: En. Sec. 5-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-113.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Issuer's obligation to its customer, 30-5-109.

DEFINITIONAL

Bank, 30-1-201.
Credit, 30-5-103.
Customer, 30-5-103.
Documents, 30-5-103.
Honor, 30-1-201.
Midnight deadline, 30-4-104.
Person, 30-1-201.
Send, 30-1-201.

30-5-114. Issuer's duty and privilege to honor — right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (30-7-507) or of a certificated security (30-8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (30-3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (30-7-502) or a bona fide purchaser of a certificated security (30-8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

History: En. Sec. 5-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-114; amd. Sec. 8, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "certificated" before "security" twice.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Time and effect of establishment of credit, 30-5-106.

Issuer's obligation to its customer, 30-5-109.

Warranties on transfer and presentment, 30-5-111.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

DEFINITIONAL

Bank, 30-1-201.
Beneficiary, 30-5-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Issuer, 30-5-103.
Notification, 30-1-201.
Receives notice, 30-1-201.
Security, 30-8-102.
Term, 30-1-201.

30-5-115. Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (30-2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under 30-2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under 30-2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

History: En. Sec. 5-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-115.

Cross-References

GENERAL

Retraction of anticipatory repudiation, 30-2-611.

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

Time and effect of establishment of credit, 30-5-106.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Transfer and assignment, 30-5-116.

DEFINITIONAL

Action, 30-1-201.
Beneficiary, 30-5-103.
Credit, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Issuer, 30-5-103.
Person, 30-1-201.
Rights, 30-1-201.

30-5-116. Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Chapter 9 on Secured Transactions and is governed by that chapter except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

History: En. Sec. 5-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-116; amd. Sec. 9, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "an account" for "a contract right" after "such an assignment is an assignment of".

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment, 30-9-318.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-9-106.
Beneficiary, 30-5-103.
Credit, 3-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.
Receive notification, 30-1-201.

30-5-117. Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by paragraphs (a) or (b) of 30-5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

History: En. Sec. 5-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-117.

Cross-References

GENERAL

Insolvency and preference, 30-4-214.

DEFINITIONAL

Advising bank, 30-5-103.
Bank, 30-1-201.
Beneficiary, 30-5-103.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Insolvent, 30-1-201.
Issuer, 30-5-103.
Person, 30-1-201.

CHAPTER 6

UNIFORM COMMERCIAL CODE
BULK TRANSFERS

Part 1 — Bulk Transfers

Section
30-6-101. Short title.
30-6-102. "Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter.

30-6-103. Transfers excepted from this chapter.
30-6-104. Schedule of property, list of creditors.
30-6-105. Notice to creditors.
30-6-106. Application of the proceeds.
30-6-107. The notice.
30-6-108. Auction sales — "auctioneer".
30-6-109. What creditors protected — credit for payment to particular creditors.
30-6-110. Subsequent transfers.
30-6-111. Limitation of actions and levies.

Chapter Cross-References

GENERAL

"Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter, 30-6-102.

Transfers excepted from this chapter, 30-6-103.

Schedule of property, list of creditors, 30-6-104.

Notice to creditors, 30-6-105.

Application of the proceeds, 30-6-106.

Auction sales — "auctioneer", 30-6-108.

Fraudulent conveyances, Title 31, ch. 2, part 3.

Part 1

Bulk Transfers

30-6-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

History: En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.

30-6-102. "Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (30-9-109) of an enterprise subject to this chapter.

(2) A transfer of a substantial part of the equipment (30-9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

History: En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.

Cross-References

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Commercial paper, Title 30, ch. 3.

Bank deposits and collections, Title 30, ch. 4.

Transfers excepted from this chapter, 30-6-103.

Investment securities, Title 30, ch. 8.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

30-6-103. Transfers excepted from this chapter. The following transfers are not subject to this chapter:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for 2 consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

History: En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.

Cross-References

GENERAL

"Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter, 30-6-102.

Schedule of property, list of creditors, 30-6-104.

Notice to creditors, 30-6-105.

Application of the proceeds, 30-6-106.

The notice, 30-6-107.

Auction sales — "auctioneer", 30-6-108.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

Applicability of bulk transfer laws, 30-9-111.

When restoration extinguishes lien, 71-3-123.

DEFINITIONAL

Creditor, 30-1-201, 30-6-109.

Person, 30-1-201.

30-6-104. Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (30-6-108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) the transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) the parties prepare a schedule of the property transferred sufficient to identify it; and

(c) the transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk and recorder of the county of residence of the transferor, and also in the office of the county clerk and recorder of the county in which the property transferred is located at the time of transfer.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the

names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

History: En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.

Cross-References

GENERAL

Notice to creditors, 30-6-105.
Application of the proceeds, 30-6-106.
Notice, 30-6-107.
What creditors protected — credit for payment to particular creditors, 30-6-109.

DEFINITIONAL

Bulk transfer, 30-6-102.
Creditor, 30-1-201, 30-6-109.
Party, 30-1-201.
Person, 30-1-201.
Signed, 30-1-201.

30-6-105. Notice to creditors. In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (30-6-108) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (30-6-107).

History: En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.

Cross-References

GENERAL

Schedule of property, list of creditors, 30-6-104, and Official Comment No. 2, MCA Annotations.
Creditors, protection of, 30-6-109.

DEFINITIONAL

Bulk transfer, 30-6-102.
Creditor, 30-1-201.

30-6-106. Application of the proceeds. In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (30-6-104) or filed in writing in the place stated in the notice (30-6-107) within 30 days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) The transferee may within 10 days after he takes possession of the goods pay the consideration into the district court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified

mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

History: En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.

Cross-References

GENERAL

Short title, 30-6-101 and Official Comment No. 4, MCA Annotations.

Transfers excepted from this chapter, 30-6-103.

Auction sales — "auctioneer", 30-6-108.

What creditors protected — credit for payment to particular creditors, 30-6-109.

DEFINITIONAL

Bulk transfer, 30-6-102.

Creditor, 30-6-109.

Writing, 30-1-201.

30-6-107. The notice. (1) The notice to creditors (30-6-105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (30-6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (30-6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

History: En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.

Cross-References

GENERAL

Application of the proceeds, 30-6-106.

Auction sales — "auctioneer", 30-6-108.

Protection of creditors, 30-6-109.

DEFINITIONAL

Bulk transfer, 30-6-102.

Creditor, 30-1-201, 30-6-109.

Person, 30-1-201.

30-6-108. Auction sales — "auctioneer". (1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (30-6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (30-6-104);

(b) give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this chapter (30-6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

History: **En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.**

Cross-References

GENERAL

Notice to creditors, 30-6-105.
Notice, 30-6-107.
Auction sales and auctioneers, Title 30, ch. 11, part 5.

DEFINITIONAL

Bulk transfer, 30-6-102.
Creditor, 30-1-201, 30-6-109.
Person, 30-1-201.
Purchaser, 30-1-201.

30-6-109. What creditors protected — credit for payment to particular creditors. (1) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (30-6-105 and 30-6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (30-6-106 and subsection (3)(c) of 30-6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

History: **En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.**

Cross-References

GENERAL

Schedule of property, list of creditors, 30-6-104.

DEFINITIONAL

Auctioneer, 30-6-108.
Bulk transfer, 30-6-102.
Creditor, 30-1-201.
Good faith, 30-1-201.

30-6-110. Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

History: **En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.**

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

"Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter, 30-6-102.

Transfers excepted from this chapter, 30-6-103.

DEFINITIONAL

Good faith, 30-1-201.
Notice, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-6-111. Limitation of actions and levies. No action under this chapter shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

History: **En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.**

Cross-References

DEFINITIONAL

Action, 30-1-201.

CHAPTER 7

UNIFORM COMMERCIAL CODE WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

Part 1 — General

Section
30-7-101. Short title.
30-7-102. Definitions and index of definitions.
30-7-103. Relation of chapter to treaty, statute, tariff, classification or regulation.
30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.
30-7-105. Construction against negative implication.

Part 2 — Warehouse Receipts—Special Provisions

30-7-201. Who may issue a warehouse receipt — storage under government bond.
30-7-202. Form of warehouse receipt — essential terms — optional terms.
30-7-203. Liability for nonreceipt or misdescription.
30-7-204. Duty of care — contractual limitation of warehouseman's liability.
30-7-205. Title under warehouse receipt defeated in certain cases.
30-7-206. Termination of storage at warehouseman's option.
30-7-207. Goods must be kept separate — fungible goods.
30-7-208. Altered warehouse receipts.
30-7-209. Lien of warehouseman.
30-7-210. Enforcement of warehouseman's lien.

Part 3 — Bills of Lading—Special Provisions

30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling.

30-7-302. Through bills of lading and similar documents.
30-7-303. Diversion — reconsignment — change of instructions.
30-7-304. Bills of lading in a set.
30-7-305. Destination bills.
30-7-306. Altered bills of lading.
30-7-307. Lien of carrier.
30-7-308. Enforcement of carrier's lien.
30-7-309. Duty of care — contractual limitation of carrier's liability.

Part 4 — Warehouse Receipts and Bills of Lading General Obligations

30-7-401. Irregularities in issue of receipt or bill or conduct of issuer.
30-7-402. Duplicate receipt or bill — overissue.
30-7-403. Obligation of warehouseman or carrier to deliver — excuse.
30-7-404. No liability for good faith delivery pursuant to receipt or bill.

Part 5 — Warehouse Receipts and Bills of Lading Negotiation and Transfer

30-7-501. Form of negotiation and requirements of "due negotiation".
30-7-502. Rights acquired by due negotiation.
30-7-503. Document of title to goods defeated in certain cases.
30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery.
30-7-505. Endorser not a guarantor for other parties.
30-7-506. Delivery without endorsement — right to compel endorsement.
30-7-507. Warranties on negotiation or transfer of receipt or bill.
30-7-508. Warranties of collecting bank as to documents.
30-7-509. Receipt or bill — when adequate compliance with commercial contract.

Part 6 — Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents.
30-7-602. Attachment of goods covered by a negotiable document.
30-7-603. Conflicting claims — interpleader.

Part 7 — Penalties

30-7-701. Penalty for issuing receipt when goods have not been delivered.
30-7-702. Penalty for fraudulently issuing receipt.
30-7-703. Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate".
30-7-704. Penalty for issuing negotiable receipt for goods which warehouseman owns.
30-7-705. Penalty for delivering goods without obtaining possession of outstanding negotiable receipt.
30-7-706. Penalty for negotiating receipt for goods with defective title.

Part 1

General

30-7-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

History: En. Sec. 7-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-101.

30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in 30-1-201(15).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: **En. Sec. 7-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-102; amd. Sec. 1, Ch. 137, L. 1979.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Receipt of goods, 30-2-103.
Right, 30-1-201.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-103. Relation of chapter to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

History: **En. Sec. 7-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-103.**

Cross-References

Laws not repealed, 30-1-111.

Limitations on scope of chapter, 30-3-103.

Who may issue a warehouse receipt — storage under government bond, 30-7-201.

Form of warehouse receipt — essential terms — optional terms, 30-7-202.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Termination of storage at warehouseman's option, 30-7-206.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

History: **En. Sec. 7-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-104.**

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bearer, 30-1-201.

Bill of lading, 30-1-201.

Delivery, 30-1-201.

Document of title, 30-1-201.

Overseas, 30-2-323.

Person, 30-1-201.

Warehouse receipt, 30-1-201.

30-7-105. Construction against negative implication. The omission from either Part 2 or Part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

History: **En. Sec. 7-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-105.**

Part 2

Warehouse Receipts — Special Provisions

Part Cross-References

Applicability of U.C.C. to law of deposits for hire, 70-6-401.

Applicability of U.C.C. to common carriers, merchants, and warehousemen, 70-9-401.

30-7-201. Who may issue a warehouse receipt — storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt

issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

History: En. Sec. 7-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-201.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

DEFINITIONAL

Warehouseman, 30-7-102.

Warehouse receipt, 30-1-201.

30-7-202. Form of warehouse receipt — essential terms — optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (30-7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this code and do not impair his obligation of delivery (30-7-403) or his duty of care (30-7-204). Any contrary provisions shall be ineffective.

History: En. Sec. 7-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-202.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

DEFINITIONAL

Bearer, 30-1-201.

Delivery, 30-1-201.

Goods, 30-7-102.

Person, 30-1-201.

Security interest, 30-1-201.

Term, 30-1-201.

Warehouseman, 30-7-102.

Warehouse receipt, 30-1-201.

Written, 30-1-201.

30-7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

History: **En. Sec. 7-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-203.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

Forgery, 45-6-325.

DEFINITIONAL

Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-204. Duty of care — contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

History: **En. Sec. 7-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-204.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Bailment — deposit, Title 70, ch. 6.

DEFINITIONAL

Action, 30-1-201.
Agreed, 30-1-201.
Goods, 30-7-102.
Reasonable time, 30-1-204.
Sign, 30-1-201.
Term, 30-1-201.

Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

History: En. Sec. 7-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-205.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-206. Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (30-7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the

demand of any person to whom he would have been bound to deliver the goods.

History: **En. Sec. 7-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-206.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

DEFINITIONAL

Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Reasonable time, 30-1-204.
Value, 30-1-201.
Warehouseman, 30-7-102.

30-7-207. Goods must be kept separate — fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

History: **En. Sec. 7-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-207.**

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

DEFINITIONAL

Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-208. Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

History: **En. Sec. 7-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-208.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

DEFINITIONAL

Issuer, 30-7-102.
Notice, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-209. Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.

If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Chapter on Secured Transactions (Chapter 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under 30-7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-209.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Policy and subject matter of chapter, 30-9-102.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Deliver, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Money, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-210; amd. Sec. 2, Ch. 137, L. 1979.

Cross-References

GENERAL

Obligation of warehousemen or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.

Part 3

Bills of Lading — Special Provisions

Part Cross-References

Carrier's contract — applicability of U.C.C., 69-11-105.

30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling. (1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper

shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

History: En. Sec. 7-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-301.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

Issuance of bills of lading by railroad station agents — penalty, 69-14-215.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignee, 30-7-102.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-302. Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

History: En. Sec. 7-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-302.

Cross-References

GENERAL

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

DEFINITIONAL

Agreement, 30-1-201.
Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Overseas, 30-2-323.
Party, 30-1-201.
Person, 30-1-201.

30-7-303. Diversion — reconsignment — change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

History: En. Sec. 7-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-303.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Term, 30-1-201.

30-7-304. Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

History: En. Sec. 7-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-304.

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.

Issuer, 30-7-102.
Overseas, 30-2-323.
Person, 30-1-201.
Receipt of goods, 30-2-103.

30-7-305. Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

History: **En. Sec. 7-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-305.**

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Receipt of goods, 30-2-103.

30-7-306. Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History: **En. Sec. 7-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-306.**

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Issuer, 30-7-102.

30-7-307. Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: **En. Sec. 7-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-307.**

Cross-References

GENERAL

Lien of warehouseman, 30-7-209.
Policy and subject matter of chapter, 30-9-102.
Priority of certain liens arising by operation of law, 30-9-310.
Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Delivery, 30-1-201.

Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-308. Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of 30-7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-308.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Bill of lading, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.

30-7-309. Duty of care — contractual limitation of carrier's liability. (1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

History: En. Sec. 7-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-309.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Railroads, notice of injury to transported livestock, 69-14-216.

DEFINITIONAL

Action, 30-1-201.
Bill of lading, 30-1-201.
Consignor, 30-7-102.
Document, 30-7-102.
Goods, 30-7-102.
Value, 30-1-201.

Part 4

Warehouse Receipts and Bills of Lading General Obligations

30-7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

History: En. Sec. 7-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-401.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Liability for nonreceipt or misdescription —"said to contain" — "shippers load and count" — improper handling, 30-7-301.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

DEFINITIONAL

Bailee, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-402. Duplicate receipt or bill — overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

History: **En. Sec. 7-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-402.**

Cross-References

GENERAL

Goods must be kept separate — fungible goods, 30-7-207.

Bills of lading in a set, 30-7-304.

Document of title to goods defeated in certain cases, 30-7-503.

Lost and missing documents, 30-7-601.

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

Forgery, 45-6-325.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Right, 30-1-201.

30-7-403. Obligation of warehouseman or carrier to deliver — excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Chapter on Sales (30-2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (30-7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under 30-7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

History: **En. Sec. 7-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-403.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Right, 30-1-201.
Terms, 30-1-201.
Warehouseman, 30-7-102.
Written, 30-1-201.

30-7-404. No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

History: **En. Sec. 7-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-404.**

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Term, 30-1-201.

Part 5

Warehouse Receipts and Bills of Lading Negotiation and Transfer

30-7-501. Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

History: En. Sec. 7-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-501.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of purchasers of instruments and documents, 30-9-309.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.

30-7-502. Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of 30-7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

History: En. Sec. 7-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-502.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Fungible, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Person, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (30-7-403) or with power of disposition under this code (30-2-403 and 30-9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History: En. Sec. 7-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-503.

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

Duplicate receipt or bill — overissue, 30-7-402.

No liability for good faith delivery pursuant to receipt or bill, 30-7-404.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Right, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

History: En. Sec. 7-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-504.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Diversion — reconsignment — change of instructions, 30-7-303.

Obligation of carrier or warehouseman to deliver, 30-7-403.

Delivery without endorsement — right to compel endorsement, 30-7-506.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Buyer in ordinary course of business, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Honor, 30-1-201.
Notification, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.

30-7-505. Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

History: En. Sec. 7-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-505.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.
Document of title, 30-1-201.
Party, 30-1-201.

30-7-506. Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

History: En. Sec. 7-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-506.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Endorser not a guarantor for other parties, 30-7-505.

DEFINITIONAL

Document of title, 30-1-201.
Rights, 30-1-201.

30-7-507. Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

History: **En. Sec. 7-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-507.**

Cross-References

GENERAL

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Warranties of collecting bank as to documents, 30-7-508.

DEFINITIONAL

Document, 30-7-102.
Document of title, 30-1-201.
Genuine, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-508. Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

History: **En. Sec. 7-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-508.**

Cross-References

GENERAL

Effect of instructions, 30-4-203.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Warranties on negotiation or transfer of receipt or bill, 30-7-507.

DEFINITIONAL

Collecting bank, 30-4-105.
Delivery, 30-1-201.
Document, 30-7-102.
Draft, 30-5-103.
Good faith, 30-1-201.

30-7-509. Receipt or bill — when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

History: **En. Sec. 7-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-509.**

Cross-References

DEFINITIONAL

Contract for sale, 30-2-106.
Document, 30-7-102.

Part 6

Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after delivery.

History: **En. Sec. 7-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-601.**

Cross-References

GENERAL

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-7-201.

30-7-602. Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History: **En. Sec. 7-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-602.**

Cross-References

GENERAL

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Value, 30-1-201.

30-7-603. Conflicting claims — interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

History: **En. Sec. 7-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-603.**

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Action, 30-1-201.
Bailee, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Reasonable time, 30-1-204.

Part 7

Penalties

30-7-701. Penalty for issuing receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: **En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R.C.M. 1921; re-en. Sec. 4128, R.C.M.1935; R.C.M. 1947, 88-150.**

30-7-702. Penalty for fraudulently issuing receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: **En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R.C.M. 1921; re-en. Sec. 4129, R.C.M. 1935; R.C.M. 1947, 88-151.**

Cross-References

Forgery, 45-6-325.
Grain storage — fraudulent receipt, 80-4-428.

30-7-703. Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate". A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost, stolen, or destroyed receipt after proceedings as provided for in 30-7-601, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: **En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R.C.M. 1921; re-en. Sec. 4130, R.C.M. 1935; amd. Sec. 11-154, Ch. 264, L. 1963; R.C.M. 1947, 88-152.**

Cross-References

Forgery, 45-6-325.

30-7-704. Penalty for issuing negotiable receipt for goods which warehouseman owns. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R.C.M. 1921; re-en. Sec. 4131, R.C.M. 1935; R.C.M. 1947, 88-153.

Cross-References

Forgery, 45-6-325.

30-7-705. Penalty for delivering goods without obtaining possession of outstanding negotiable receipt. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except where the receipt has been lost, stolen, or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien or because of their perishable or hazardous nature, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding $1,000 or by both.

History: En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R.C.M. 1921; re-en. Sec. 4132, R.C.M. 1935; amd. Sec. 11-155, Ch. 264, L. 1963; R.C.M. 1947, 88-154.

30-7-706. Penalty for negotiating receipt for goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R.C.M. 1921; re-en. Sec. 4133, R.C.M. 1935; R.C.M. 1947, 88-155.

CHAPTER 8

UNIFORM COMMERCIAL CODE
INVESTMENT SECURITIES

Part 1 — Short Title and General Matters

Section

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30-8-107. Securities transferable — action for price.
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30-8-320. Transfer or pledge within central depository system.
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30-8-401. Duty of issuer to register transfer, pledge, or release.
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Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Limitations on scope of chapter, 30-3-103.

Part 1

Short Title and General Matters

Part Cross-References

Municipal revenue bonds — interim receipts or certificates, 7-7-4435.

Refunding revenue bonds to be fully negotiable, 7-7-4608.

Parking commissions — bonds to be negotiable, 7-14-4661.

30-8-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Investment Securities.

History: **En. Sec. 8-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-101.**

30-8-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

(i) represented by an instrument issued in bearer or registered form;

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this chapter and not by Title 30, chapter 3, even though it also meets the requirements of that chapter. This chapter does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer or another temporary purpose or payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this chapter.

(d) A certificated security is in "registered form" if:

(i) it specifies a person entitled to the security or to the rights it represents; and

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) at least 90% of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation and each of which is:

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(ii) a broker, dealer, or investment company registered under the federal securities laws; or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of such capital stock as is necessary to permit them to qualify as directors.

(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim". 30-8-302.
"Bona fide purchaser". 30-8-302.
"Broker". 30-8-303.
"Debtor". 30-9-105.
"Financial intermediary". 30-8-313.
"Guarantee of the signature". 30-8-402.
"Initial transaction statement". 30-8-408.
"Instruction". 30-8-308.
"Intermediary bank". 30-4-105.
"Issuer". 30-8-201.
"Overissue". 30-8-104.
"Secured party". 30-9-105.
"Security agreement". 30-9-105.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-102; amd. Sec. 10, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), substituted present introductory phrase for "A security is an instrument which:"; at beginning of (1)(a)(i) inserted "represented by an instrument"; at end of (1)(a)(iii) substituted "shares, participations, interest, or obligations" for "instruments"; redesignated former (1)(a)(iv) as (b) which also redesignates subsequent subsections; at beginning of (1)(b) substituted "An uncertificated security is" for "evidence"; in (1)(b) deleted "in" before "an enterprise"; in (1)(b) inserted "of the issuer" after "an enterprise"; in (1)(b) deleted "evidences" before "an obligation"; at end of (1)(b) inserted "which is:"; in (1)(b) inserted (i) through (iii); in (1)(c) inserted first two sentences; in (1)(c) rewrote third sentence from "A writing which is a security is governed by this chapter and not by Uniform Commercial Code — Commercial Paper . . ."; at end of (1)(c) inserted last sentence; in (1)(d) inserted "certificated" before "security"; in (1)(d)(i) substituted "represents" for "evidences"; in (1)(e) inserted "certificated" before "security"; in (3) inserted "registered as a clearing agency under the federal securities laws or a corporation"; in (3)(a) substituted organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation and" for "persons, other than individuals"; in (3)(a)(i) deleted from end "and does not hold in excess of 20% of the capital stock of the corporation"; in (3)(a)(ii) substituted "federal securities laws" for "Securities Exchange Act of 1934 or the Investment Company Act of 1940 does not hold in excess of 20% of the capital stock of the corporation"; in (3)(a)(iii) substituted "the federal securities laws" for "a statute of the United States such as the Securities Exchange Act of 1934"; in (5) substituted "30-8-302" for "30-8-301" after "Adverse claim"; in (5) inserted provisions on "Debtor", "Financial intermediary", "Initial transaction statement", "Instruction", "Secured party", and "Security agreement"; and made grammatical changes.

Cross-References

DEFINITIONAL

Bearer, 30-1-201.
Issuer, 30-8-201.
Money, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-8-103. Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

History: En. Sec. 8-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-103; amd. Sec. 11, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote section from "A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security."

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of issuer's restrictions on transfer, 30-8-204.

Lien on future interest, 71-3-105.

DEFINITIONAL

Certificated security, 30-8-102.
Conspicuous, 30-1-201.
Issuer, 30-8-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-104. Effect of overissue — "overissue". (1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or

(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

History: En. Sec. 8-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-104; amd. Sec. 12, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), rewrote last half from "... compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds"; and made grammatical changes.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized signature on issue, 30-8-205.

Completion or alteration of certificated security or initial transaction statement, 30-8-206.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Effect of unauthorized endorsement or instruction, 30-8-311.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.

Issuer, 30-8-201.

Security, 30-8-102.

Uncertificated security, 30-8-102.

Value, 30-1-201.

30-8-105. Certificated securities negotiable — statements and instructions not negotiable — presumptions. (1) Certificated securities governed by this chapter are negotiable instruments.

(2) Statements (30-8-408), notices, or the like sent by the issuer of uncertificated securities and instructions (30-8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleading, each signature on a certificated security, in a necessary endorsement, on an initial transaction statement, or on an instruction is admitted;

(b) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (30-8-202).

History: En. Sec. 8-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-105; amd. Sec. 13, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "certificated" before "securities" and inserted "statements and instructions not negotiable —"; in (1) inserted "certificated" before "securities"; inserted (2); in (3)(a) substituted "a certificated security, in a" for "the security or in a"; in (3)(a) inserted ", on an initial transaction statement, or on an instruction"; in (3)(c) inserted "on a certificated security" after "signatures" and substituted "security" for "instrument" before "entitles"; inserted (3)(d); and made grammatical changes.

Cross-References

GENERAL

Limitations on scope of chapter, 30-3-103.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Rights acquired by purchaser, 30-8-301.

DEFINITIONAL

Certificated security, 30-8-102.

Security, 30-8-102.

Uncertificated security, 30-8-102.

30-8-106. Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(1) registration of transfer of a certificated security;

(2) registration of transfer, pledge, or release of an uncertificated security; and

(3) sending of statements of uncertificated securities.

History: En. Sec. 8-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-106; amd. Sec. 14, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote section from "The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer."

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Registration, Title 30, ch. 8, part 4.

Territorial application (securities regulation), 30-10-409.

DEFINITIONAL

Certificated security, 30-8-102.

Issuer, 30-8-201.

Security, 30-8-102.

Uncertificated security, 30-8-102.

30-8-107. Securities transferable — action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) certificated securities accepted by the buyer;

(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

History: En. Sec. 8-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-107; amd. Sec. 15, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, substituted "transferable" for "deliverable"; in (1) substituted "obligated to transfer securities may transfer any certificated security" for "obligated to deliver securities may deliver any security"; at end of (1) inserted "or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee"; in (2)(a) inserted "certificated" before "securities"; inserted (2)(b); and made grammatical changes.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.

Seller's damages for nonacceptance or repudiation, 30-2-708.

Action for price, 30-2-709.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

Effect of endorsement without delivery, 30-8-309.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

Statute of Frauds, 30-8-319.

DEFINITIONAL

Action, 30-1-201.

Certificated security, 30-8-102.

Contract, 30-1-201.

Person, 30-1-201.

Security, 30-8-102.

Uncertificated security, 30-8-102.

30-8-108. Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

History: En. Sec. 16, Ch. 402, L. 1983.

Cross-References

GENERAL

Rights and duties of issuer in respect to registered owners and registered pledgees, 30-8-207.

Enforceability, attachment, perfection and termination of security interests, 30-8-321.

Duty of issuer to register, transfer, pledge, or release, 30-8-401.

DEFINITIONAL

Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.

Part 2

Issue — Issuer

30-8-201. "Issuer". (1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation represented by the certificated security;

(b) creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in his rights or property, which fractional interests are represented by certificated securities; or

(d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to 30-8-408.

(3) With respect to registration of transfer, pledge, or release (part 4 of this chapter), "issuer" means a person on whose behalf transfer books are maintained.

History: En. Sec. 8-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-201; amd. Sec. 17, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), inserted "certificated" before "security" twice; in (1)(a) substituted "represented" for "evidenced"; inserted (1)(b); in (1)(c) substituted "represented by certificated securities" for "evidenced by securities"; in (2) inserted "certificated" before "security"; at end of (2) inserted "or on statements of uncertificated securities sent pursuant to 30-8-408"; in (3), after "transfer" inserted ", pledge, or release".

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized signature on issue, 30-8-205.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.

Person, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-202. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unauthorized signatures (30-8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

History: En. Sec. 8-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-202; amd. Sec. 18, Ch. 402, L. 1983; amd. Sec. 1, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: Near end of (1)(b) inserted "registered owner or"; and in (2) made minor change in phraseology by inserting "if he is".

1983 Amendment: Divided (1); at beginning of (1)(a) inserted "if the security is certificated,"; inserted (1)(b); near beginning of (1)(c) inserted ", on the certificated security or in the initial transaction statement,"; near end of first sentence of (1)(c) deleted "stated" before "terms" and inserted after "terms": "stated on the certificated security or contained in the statement"; near beginning of second sentence of (1)(c) inserted "under this subsection"; near end of (1)(c) inserted "certificated" before "security" and inserted "or statement" after "security"; combined (2)(a) and (2)(b); at beginning of (2) substituted "A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued" for "A security other than one issued"; in (2) substituted "is valid with respect to the purchaser" for "is valid in the hands of a purchaser for value and" before "without notice of the particular defect"; in (2) substituted "This subsection" for "The rule of subparagraph (a)" before "applies to an issuer"; in (3) deleted "otherwise" after "(3) Except as", deleted "on issue" before "(30-8-205)," and substituted "certificated security or an initial transaction statement" for "security" before "is a complete defense"; in (4) inserted "of a certificated or uncertificated security," after "defenses of the issuer" and inserted "certificated" before "security, are ineffective"; and made grammatical changes.

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Effect of overissue — "overissue", 30-8-104.

Staleness as notice of defects or defenses, 30-8-203.

Effect of issuer's restrictions on transfer, 30-8-204.

Completion or alteration of certificated security or initial transaction statement, 30-8-206.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Genuine, 30-1-201.
Issuer, 30-8-201.
Money, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Subsequent purchaser, 30-8-102.
Term, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-203. Staleness as notice of defects or defenses. (1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) the act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of those on presentation or surrender of the certificated security; the funds or securities are available on the date set for payment or exchange; and he takes the security more than 1 year after that date; and

(b) the act or event is not covered by subsection (1)(a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

(2) A call that has been revoked is not within subsection (1).

History: **En. Sec. 8-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-203; amd. Sec. 19, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted "obligation represented by a certificated security or that sets a date" for "obligation evidenced by the security or which sets a date"; in (1)(a) substituted "payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of those on presentation" for "payment of money or the delivery of securities or both on presentation"; in (1)(a) inserted "certificated" before "security; the funds"; and made grammatical changes.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Staleness as notice of adverse claims, 30-8-305.

DEFINITIONAL

Certificated security, 30-8-102.

Delivery, 30-1-201.
Issuer, 30-8-201.
Money, 30-1-201.
Notice, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-204. Effect of issuer's restrictions on transfer. A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(1) the security is certificated and the restriction is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

History: En. Sec. 8-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-204; amd. Sec. 20, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Deleted from beginning of introductory material, "Unless noted conspicuously on the security"; inserted in introductory material "of a security" after "restriction on transfer"; at end of introductory material substituted "is ineffective against any person without actual knowledge of it unless:" for "is ineffective except against a person with actual knowledge of it."; inserted (1) and (2).

Cross-References

GENERAL

Issuer's lien, 30-8-103.
Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Conspicuous, 30-1-201.
Issuer, 30-8-201.
Knowledge, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-205. Effect of unauthorized signature on certificated security or initial transaction statement. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

History: En. Sec. 8-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-205; amd. Sec. 21, Ch. 402, L. 1983; amd. Sec. 2, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: In catchline substituted "certificated security or initial transaction statement" for "issue"; and in (1) after "similar securities" inserted "or of initial transaction statements".

1983 Amendment: In introductory material, rewrote present language from "An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:"; at end of (1) inserted "of any of them"; at end of (2) inserted "or initial transaction statement"; and made grammatical changes.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized endorsement or instruction, 30-8-311.

Forgery, 45-6-325.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Sign, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-206. Completion or alteration of certificated security or initial transaction statement. (1) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

History: En. Sec. 8-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-206; amd. Sec. 22, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: At end of catchline, substituted "certificated security or initial transaction statement" for "instrument"; in beginning of (1) and (2) inserted "certificated" before "security"; inserted (3) and (4) and made grammatical changes.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Effect of unauthorized signature on issue, 30-8-205.

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Endorsements — instructions, 30-8-308.

Effect of unauthorized endorsement or instruction, 30-8-311.

Forgery, 45-6-325.

DEFINITIONAL

Certificated security, 30-8-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Term, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees. (1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

History: En. Sec. 8-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-207; amd. Sec. 23, Ch. 402, L. 1983; amd. Sec. 3, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: At end of (5) substituted "security interest" for "security"; and made minor changes in punctuation and phraseology.

1983 Amendment: In catchline, inserted "and duties" after "Rights"; at end of catchline inserted "and registered pledgees"; in (1) inserted "certificated" before "security"; inserted (2) through (6).

Cross-References

GENERAL

Registration of pledge and release of uncertificated securities, 30-8-108.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Money, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Registered form, 30-8-102.
Right, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.

30-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(a) the certificated security or initial transaction statement is genuine;

(b) his own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authority received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

History: En. Sec. 8-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-208; amd. Sec. 24, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "upon a certificated security or an initial transaction statement as authenticating trustee" for "upon a security as authenticating trustee"; in (1) inserted "of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is" before "without notice"; in (1)(a) rewrote to present language from "the security is genuine and in proper form"; in (1)(b) inserted "or registration of the transfer, pledge, or release" before "of the security"; near end of (1)(b) substituted "authority" for "authorization"; and made grammatical changes.

Cross-References

GENERAL

Proper form of security, 30-8-102.

Effect of unauthorized signature on issue, 30-8-205.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

DEFINITIONAL

Agreed, 30-1-201.
Certificated security, 30-8-102.
Genuine, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

Part 3

Transfer

30-8-301. Rights acquired by purchaser. (1) Upon transfer of a security to a purchaser (30-8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by 30-8-302(4).

(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

History: En. Sec. 8-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-301; amd. Sec. 25, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, deleted "— adverse claim — title acquired by bona fide purchaser"; at beginning of (1) substituted "Upon transfer of a security to a purchaser (30-8-313)," for "Upon delivery of a security"; at end of (1) substituted "unless the purchaser's rights are limited by 30-8-302(4)." for "except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. Adverse claim includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security."; deleted former (2), which read "A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim."; at beginning of (2) substituted "transferee" for "purchaser", at end of first sentence of (2) substituted "transferred" for "purchased", and inserted second sentence of (2).

Cross-References

GENERAL

Transfer — right to endorsement, 30-3-201.

Issuance of security, Title 30, ch. 8, part 2.

Transfer or pledge within a central depository system, 30-8-320.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Registration of transfer of security, Title 30, ch. 8, part 4.

Protection of purchasers of instruments and documents, 30-9-309.

DEFINITIONAL

Purchaser, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.

30-8-302. "Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser. (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(a) who takes delivery of a certificated security in bearer form or registered form, issued or endorsed to him or in blank;

(b) to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of subsections (1)(c), (1)(d)(i), or (1)(g) of 30-8-313.

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser, in addition to acquiring the rights of a purchaser (30-8-301), also acquires his interest in the security free of any adverse claim.

(4) Notwithstanding 30-8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security or who as a prior holder of that certificated security had notice of an adverse claim cannot improve his position by taking from a bona fide purchaser.

History: En. Sec. 8-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-302; amd. Sec. 26, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "— adverse claim — title acquired by bona fide purchaser"; divided former section into (1)(introductory matter) and (1)(a); in (1)(a) inserted "certificated" before "security"; in (1)(a) deleted "of one in" before "registered form"; in (1)(a) deleted "to him" after "issued"; inserted (1)(b) and (1)(c), and (2) through (4); and made grammatical changes.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Effect of issuer's restrictions on transfer, 30-8-204 and Official Comment, MCA Annotations.

Rights acquired by purchaser, 30-8-301.

DEFINITIONAL

Bearer form, 30-8-102.
Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsed, 30-8-308.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-303. "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

History: En. Sec. 8-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-303; amd. Sec. 27, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Made minor changes in grammar.

Cross-References

DEFINITIONAL

Person, 30-1-201.
Security, 30-8-102.

30-8-304. Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under 30-8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

History: En. Sec. 8-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-304; amd. Sec. 28, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In introductory matter of (1), inserted "certificated" before "security"; inserted (2); in (3) inserted "of a certificated or uncertificated security" after "for the seller or buyer)"; in middle of (3) inserted "constructive" before "notice of adverse claims"; made grammatical changes.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.
"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.
Staleness as notice of adverse claims, 30-8-305.
Endorsements — instructions, 30-8-308.
Registration, Title 30, ch. 8, part 4.
Issuer's duty as to adverse claims, 30-8-403.

DEFINITIONAL

Adverse claim, 30-8-301.
Bearer form, 30-8-102.
Broker, 30-8-303.

Certificated security, 30-8-102.
Endorsement, 30-8-308.
Intermediary bank, 30-4-105.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Writing, 30-1-201.

30-8-305. Staleness as notice of adverse claims. An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:

(1) after 1 year from any date set for presentment or surrender for redemption or exchange; or

(2) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

History: En. Sec. 8-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-305; amd. Sec. 29, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In introductory matter, substituted "event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security" for "event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security"; at end of introductory matter substituted "transfer" for "purchase".

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Staleness as notice of defects or defenses, 30-8-203.

Notice to purchaser of adverse claims, 30-8-304.

DEFINITIONAL

Adverse claim, 30-8-301.
Certificated security, 30-8-102.
Money, 30-1-201.
Notice, 30-1-201.
Purchase, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.

30-8-306. Warranties on presentment and transfer of certificated securities — warranties of originators of instructions. (1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (30-8-311) in a necessary endorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) he knows of no fact which might impair the validity of the security.

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection

of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer, he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (30-8-312(3)) that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer:

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instructions will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (30-8-312(6)) that:

(a) he is an appropriate person to originate the instruction;

(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer:

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subsections (7)(b), (7)(c)(ii), and (7)(c)(iii).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) his transfer is effective and rightful; and

(b) the uncertificated security is valid.

(10) A broker gives to his customer, the issuer, and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker

acting as an agent are in addition to applicable warranties given by and in favor of his customer.

History: **En. Sec. 8-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-306; amd. Sec. 30, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In catchline, inserted "of certificated securities — warranties of originators of instructions"; in (1) inserted "certificated" before "security" in two places, and inserted "or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him" after "registration of transfer"; near beginning of (2) and (3) inserted "certificated" before "security"; in (4) inserted "certificated" before "security"; inserted (5) through (9); in (10) inserted "applicable" before "warranties"; made minor grammatical changes.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Issuer's lien, 30-8-103.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Rights acquired by purchaser, 30-8-301.

Effect of unauthorized endorsement or instruction, 30-8-311.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Lost, destroyed, and stolen certificated securities, 30-8-405.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Broker, 30-8-303.
Certificated security, 30-8-102.
Debtor, 30-9-105.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Good faith, 30-1-201.
Issuer, 30-8-201.
Knowledge, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-307. Effect of delivery without endorsement — right to compel endorsement. If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

History: **En. Sec. 8-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-307; amd. Sec. 31, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted "certificated" before "security"; and made minor grammatical changes.

Cross-References

GENERAL

Delivery without endorsement — right to compel endorsement, 30-7-506.

Securities transferable — action for price, 30-8-107.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Endorsements — instructions, 30-8-308.

Effect of endorsement without delivery, 30-8-309.

Purchaser's right to requisites for registration of transfer, pledge, or release on books, 30-8-316.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Right, 30-1-201.

30-8-308. Endorsements — instructions. (1) An endorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security.

(2) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom the security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

(3) An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means the person specified by the certificated security or by special endorsement to be entitled to the security.

(7) An "appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), an "appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(b) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;

(d) if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(e) a person having power to sign under applicable law or controlling instrument; and

(f) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

(9) Unless otherwise agreed, the endorser of a certificated security by his endorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in 30-8-306.

(10) Whether the person signing is appropriate is determined as of the date of signing, and an endorsement made or an instruction originated by him does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his endorsement or an instruction originated by him unauthorized for the purposes of this chapter.

History: En. Sec. 8-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-308; amd. Sec. 32, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present catchline for "Endorsement, how made — special endorsement — endorser not a guarantor — partial assignment"; in (1) inserted "certificated" before "security" and substituted "his signature" for "when the signature of such person" before "is written without"; in (2) deleted "the person" after "endorsement specifies"; inserted (3) through (5); combined (3)(a) with (3) to become (6) and made (3)(b) through (3)(g) (8)(a) through (8)(f); in (6) inserted "certificated" before "security"; inserted (7) and introductory material of (8); in (8)(a) substituted "designated" for "so specified"; in (8)(b) substituted "persons designated are described as" for "security or endorsement so specifies"; in (8)(c) substituted "designated" for "so specified"; in (8)(d) substituted "persons designated are described as" for "security or endorsement so specified"; in (8)(f) inserted "the person designated or" after "extent that"; deleted "or" at end of (8)(a) through (8)(e) and inserted "and" at end of (8)(e); in (9) rewrote from "Unless otherwise agreed the endorser by his endorsement assumes no obligation that the security will be honored by the issuer."; deleted former (5), which read "An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement."; in (10) inserted "made or an instruction originated" after "endorsement" and substituted "him" for "such a person" after "originated by"; in (11) inserted "pledge, or release," after "transfer" and inserted "or an instruction originated by him" after "endorsement".

Cross-References

GENERAL

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Effect of delivery without endorsement — right to compel endorsement or instruction, 30-8-307.

Effect of endorsement without delivery, 30-8-309.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Registration, Title 30, ch. 8, part 4.

Assurance that endorsements and instructions are effective, 30-8-402.

Liability and nonliability for registration, 30-8-404.

DEFINITIONAL

Bearer, 30-1-201.
Certificated security, 30-8-102.
Holder, 30-1-201.
Honor, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Writing, 30-1-201.
Written, 30-1-201.

30-8-309. Effect of endorsement without delivery. An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security.

History: En. Sec. 8-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-309; amd. Sec. 33, Ch. 402, L. 1983; amd. Sec. 4, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: In middle inserted "certificated" before "security".

1983 Amendment: Inserted "certificated" before "security" in two places.

Cross-References

GENERAL

Securities transferable — action for price, 30-8-107.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsement, 30-8-308.

30-8-310. Endorsement of certificated security in bearer form. An endorsement of a certificated security in bearer form may give notice of adverse claims (30-8-304) but does not otherwise affect any right to registration the holder possesses.

History: En. Sec. 8-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-310; amd. Sec. 34, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "certificated" before "security" in catchline and once in text; at end substituted "possesses" for "may possess".

Cross-References

GENERAL

Endorsements — instructions, 30-8-308.

DEFINITIONAL

Adverse claims, 30-8-301.
Bearer form, 30-8-102.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Holder, 30-1-201.
Notice, 30-1-201.
Right, 30-1-201.

30-8-311. Effect of unauthorized endorsement or instruction. Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(1) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued, or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(2) an issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (30-8-404).

History: En. Sec. 8-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-311; amd. Sec. 35, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "or instruction"; in introductory matter inserted "or pledgee" after "the owner" and inserted "or instruction" after "endorsement"; in (1) inserted "certificated" before "security" and inserted final phrase beginning "or received an initial transaction . . ."; in (2) inserted "certificated" before "security" and inserted "or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction".

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Adverse claim, 30-8-301.
Certificated security, 30-8-102.
Good faith, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Purchaser, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-312. Effect of guaranteeing signature, endorsement, or instruction. (1) Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to endorse (30-8-308); and

(c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction (30-8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

(c) the signer had legal capacity to sign; and

(d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(b) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) The guarantor under subsections (1) and (2) or the special guarantor under subsection (3) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(5) Any person guaranteeing an endorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (1) but also warrants the rightfulness of the particular transfer in all respects.

(6) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of endorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties.

History: En. Sec. 8-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-312; amd. Sec. 36, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "or instruction"; in (1) before "security" inserted "certificated"; inserted (2) and (3); in (4) rewrote present language from "But the guarantor does not otherwise warrant the rightfulness of the particular transfer"; in (5) rewrote present language from "Any person may guarantee an endorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects"; inserted (6); in (7) rewrote present language from "But no issuer may require a guarantee of endorsement as a condition to registration of transfer"; and made grammatical changes.

Cross-References

GENERAL

Certificated securities negotiable — statements and instructions not negotiable — presumptions, 30-8-105.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Sign, 30-1-201.
Uncertificated security, 30-8-102.

30-8-313. When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary". (1) Transfer of a security or limited interest (including a security interest) therein to a purchaser occurs only:

(a) at the time he or a person designated by him acquires possession of a certificated security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under 30-8-320;

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under (a), (b), (c), (d), or (g) of subsection (1), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in (c), (d)(i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

History: En. Sec. 8-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-313; amd. Sec. 37, Ch. 402, L. 1983; amd. Sec. 5, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: Made minor changes in phraseology for conformity to U.C.C. format.

1983 Amendment: In catchline, rewrote present language from "When delivery to the purchaser occurs — purchaser's broker as holder"; in introductory material of (1) rewrote present language from "Delivery to a purchaser occurs when:"; in (1)(a) at beginning inserted "at the time", and before "security" inserted "certificated"; inserted (1)(b); in (1)(c) substituted "at the time his financial intermediary acquires" for "his broker acquires", and before "security" inserted "certificated"; in (1)(d) at beginning substituted "at the time a financial intermediary, not a clearing corporation," for "his broker", near end after "otherwise identifies" deleted "a specific security in the broker's possession"; and inserted (i) through (iii); in (1)(e) before "security" inserted "certificated", and after "third person" inserted "not a financial intermediary, at the time"; inserted (1)(f); in (1)(g) at beginning inserted "at the time", and after "appropriate entries" inserted "to the account of the purchaser or a person designated by him"; inserted (1)(h) through (1)(j); in (2) rewrote present language from "The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk."; in (3) substituted "financial intermediary" for "broker" four times, after "takes delivery" inserted "of a certificated security", near middle inserted "or after the transfer ... who has given value", and near end substituted "transfer" for "delivery"; inserted (4); and made grammatical changes.

Cross-References

GENERAL

Overissue of security, effect of, 30-8-104.

Securities transferable — action for price, 30-8-107.

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty to transfer — when completed, 30-8-314.

Action against transferee based upon wrongful transfer, 30-8-315.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

DEFINITIONAL

Adverse claim, 30-8-301.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Clearing corporation, 30-8-102.
Debtor, 30-9-105.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Fungible, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-314. Duty to transfer — when completed. (1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the selling broker or of a person designated by the broker;

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he:

(a) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within subsection (2) and not within subsection (1).

History: En. Sec. 8-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-314; amd. Sec. 38, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, substituted "transfer —" for "deliver,"; in (1)(a) at end substituted "transfer at the time" for "deliver when"; divided former (1)(a) into (i) and (iii); in (1)(a)(i) substituted "a certificated security" for "such a security"; inserted (1)(a)(ii); in (1)(a)(iii) substituted "a certificated or uncertificated security" for "it", and substituted "the broker; or" for "him; and"; inserted (1)(a)(iv); in (1)(b) at end substituted "transfer at the time he:" for "deliver by placing the"; divided former (1)(b) into (i) and (iv); in (1)(b)(i) at beginning substituted "places a certificated security" for "security or a like security"; and at end substituted "the buying broker;" for "him or by effecting"; inserted (1)(b)(ii) and (iii); in (1)(b)(iv) at beginning inserted "effects"; in (2) substituted "transfer" for "deliver" and divided (2) into (2)(a) and (c); in (2)(a) near beginning substituted "a certificated" for "the", and at end substituted "the purchaser;" for "him or at the purchaser's request"; inserted (2)(b); in (2)(c) at beginning inserted "if the purchaser requests", and at end substituted "a certificated or uncertificated security is held for the purchaser" for "it is held for him"; and made grammatical changes.

Cross-References

GENERAL

Securities transferable — action for price, 30-8-107.

Broker, 30-8-303.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Agreement, 30-1-201.
Broker, 30-8-303.
Certificated security, 30-8-102.
Contract, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-315. Action against transferee based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser, may:

(a) reclaim possession of the certificated security wrongfully transferred;

(b) obtain possession of any new certificated security representing all or part of the same rights;

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (30-8-311).

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced, the transfer of a certificated or uncertificated security enjoined, and a certificated security impounded pending the litigation.

History: **En. Sec. 8-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-315; amd. Sec. 39, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In catchline, substituted "transferee" for "purchaser"; in (1) near end before "against anyone" substituted "as" for "may", at end inserted "may:" and divided former (1) into (1)(a), (b) and (d); in (1)(a) before "security" inserted "certificated" and at end inserted "wrongfully transferred"; in (1)(b) before "security" inserted "certificated" and substituted "representing" for "evidencing"; inserted (1)(c); in (2) after "unauthorized endorsement" inserted "of a certificated security", and before "security even from" inserted "certificated"; in (3) near beginning and end before "security" inserted "certificated", before "may be specifically enforced" inserted "or to compel the origination of a transfer instruction", after "specifically enforced" substituted "the" for "and its", and after "the transfer" inserted "of a certificated or uncertificated security"; and made grammatical changes.

Cross-References

GENERAL

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

No conversion by good faith conduct, 30-8-318.

DEFINITIONAL

Action, 30-1-201.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Person, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.
Unauthorized endorsement, 30-1-201.
Uncertificated security, 30-8-102.

30-8-316. Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release.

History: **En. Sec. 8-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-316; amd. Sec. 40, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In catchline inserted ", pledge, or release"; near beginning substituted "the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must" for "the transferor must on due demand"; after "authority to transfer" inserted ", pledge, or release"; after "any other requisite" deleted "which may be"; near middle twice after "transfer" inserted ", pledge, or release"; after "transferor" inserted ", pledgor, or pledgee"; in last sentence after "Failure" inserted "within a reasonable time", and after "demand made" deleted "within a reasonable time"; at end inserted ", pledge, or release".

Cross-References

GENERAL

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

DEFINITIONAL

Certificated security, 30-8-102.
Purchaser, 30-1-201.
Reasonable time, 30-1-204.
Right, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-317. Creditor's rights. (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process.

History: En. Sec. 8-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-317; amd. Sec. 41, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, changed from "Attachment or levy upon security"; at beginning of (1) inserted "Subject to the exceptions in subsections (3) and (4),", in two places before "security" inserted "certificated", after "share or other interest" substituted "represented" for "evidenced", and at end substituted "reached by a creditor by legal process at the issuer's chief executive office in the United States" for "attached or levied upon at the source"; inserted (2) through (5); near end of (6) substituted "reached" for "attached or levied upon"; and made grammatical changes.

Cross-References

GENERAL

What property subject to execution, 25-13-501.

Attachment, investment securities and stocks, 27-18-409.

Attachment, corporate stock — service on Secretary of State, 27-18-410.

Issuer's lien, 30-8-103.

DEFINITIONAL

Certificated security, 30-8-102.
Creditor, 30-1-201.
Debtor, 30-9-105.
Issuer, 30-8-201.

Secured party, 30-9-105.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-318. No conversion by good faith conduct. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

History: En. Sec. 8-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-318; amd. Sec. 42, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, substituted "conduct" for "delivery"; near middle before "securities" inserted "certificated"; near middle after "sold, pledged, or delivered them" inserted "or has sold or caused the transfer or pledge of uncertificated securities over which he had control"; at end substituted "had no right so to deal with the securities" for "has no right to dispose of them".

Cross-References

GENERAL

No liability for good faith delivery pursuant to receipt or bill, 30-7-404.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Good faith, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-319. Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

History: En. Sec. 8-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-319; amd. Sec. 43, Ch. 402, L. 1983; amd. Sec. 6, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: In (3) substituted "subsection (1)" for "paragraph (a)".

1983 Amendment: In (2), rewrote present language from "delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment"; and made grammatical changes.

Cross-References

GENERAL

Statute of Frauds — contracts, 28-2-903.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

DEFINITIONAL

Action, 30-1-201.
Broker, 30-8-303.
Certificated security, 30-8-102.
Contract, 30-1-201.
Delivery, 30-1-201.
Issuer, 30-8-201.
Party, 30-1-201.
Purchase, 30-1-201.
Reasonable time, 30-1-204.
Security, 30-8-102.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Writing, 30-1-201.

30-8-320. Transfer or pledge within central depository system. (1) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation, reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged, or released if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation and is subject to the control of the clearing corporation; and:

(a) if certificated:

(i) is in the custody of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them; and

(ii) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like and, in appropriate cases, may be on a net basis, taking into account other transfers, pledges, or releases of the same security.

(3) A transfer under this section is effective (30-8-313), and the purchaser acquires the rights of the transferor (30-8-301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (30-8-321). A transferee or pledgee under this section may be a bona fide purchaser (30-8-302).

(4) A transfer or pledge under this section is not a registration of transfer under part 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units

of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list.

History: **En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-320; amd. Sec. 44, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted present language for "If a security:"; inserted (a); in (1)(a)(i) after "clearing corporation" inserted ", another clearing corporation,", and at end substituted "any of them" for "either subject to the instructions of the clearing corporation"; in (1)(a)(ii) substituted "a" for "or" between "corporation" and "bank", substituted "any of them" for "either"; and at end substituted "or" for "and"; inserted (1)(b); deleted former (1)(c), which read: "is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged."; in (2) near end after "transfers, pledges" inserted "or releases"; rewrote (3) from "A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (30-8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (30-9-304 and 30-9-305). A transferee or pledgee under this section is a holder."; in (4) substituted "section is not a registration" for "section does not constitute a registration".

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

Action against transferee based on wrongful transfer, 30-8-315.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Exempt transactions, 30-10-105.

DEFINITIONAL

Appropriate person, 30-8-308.
Bearer form, 30-8-102.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Clearing corporation, 30-8-102.
Custodian bank, 30-8-102.
Endorsement, 30-8-308.
Fungible, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-321. Enforceability, attachment, perfection, and termination of security interests. (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under 30-8-313(1)(i) becomes unperfected after 21 days unless within that time the requirements for transfer under any other provision of 30-8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of chapter 9, but no filing is required to perfect the security interest and no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in subsections (1)(h), (1)(i), or (1)(j) of 30-8-313. The secured party has the rights and duties provided under 30-9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of 30-8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless within that time the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

History: En. Sec. 45, Ch. 402, L. 1983.

Cross-References

GENERAL

When delivery to purchaser occurs — purchaser's broker as holder, 30-8-313.

Enforceability of security interest, 30-9-203.

DEFINITIONAL

Certificated security, 30-8-102.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.
Value, 30-1-201.

Part 4

Registration

30-8-401. Duty of issuer to register transfer, pledge, or release. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge, or release as requested if:

(a) the security is endorsed or the instruction was originated by the appropriate person or persons (30-8-308);

(b) reasonable assurance is given that those endorsements or instructions are genuine and effective (30-8-402);

(c) the issuer has no duty as to adverse claims or has discharged the duty (30-8-403);

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(2) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

History: En. Sec. 8-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-401; amd. Sec. 46, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted ", pledge, or release"; in (1) near beginning before "security" inserted "certificated", near middle inserted "or an instruction is presented to the issuer with a request to register transfer, pledge, or release", near end substituted "shall" for "is under a duty to", and near end after "transfer" inserted ", pledge, or release"; in (1)(a) inserted "or the instruction was originated"; in (1)(b) after "endorsements" inserted "or instructions"; in (1)(c) before "adverse claims" substituted "as to" for "to inquire into"; in (1)(e) inserted ", pledge, or release"; in (2) after "transfer" inserted ", pledge, or release", substituted "a certificated security or an instruction" for "it", and at end inserted ", pledge, or release"; and made grammatical changes.

Cross-References

GENERAL

Issuer, 30-8-201.

Effect of issuer's restrictions on transfer, 30-8-204.

Rights acquired by purchaser, 30-8-301.

Endorsements — instructions, 30-8-308.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.

30-8-402. Assurance that endorsements and instructions are effective. (1) The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (30-8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (30-8-312 (1) or (2)) of the person endorsing a certificated security or originating an instruction, including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(b) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) if the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the endorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 180 days before the date of presentation for transfer, pledge, or release; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

History: En. Sec. 8-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-402; amd. Sec. 47, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "and instructions"; in (1) inserted "of a certificated security or each instruction"; in (1)(a) inserted reference to (2) of 30-8-312, and inserted "a certificated security ... reasonable assurance of identity"; in (1)(b), (c), and (e) inserted "made or the instruction is originated"; in (1)(d) at end inserted "and"; in (2) near end substituted "if they" for "provided such standards"; in (3)(a) increased time from 60 to 180 days, and at end inserted ", pledge, or release"; in (3)(b) before "are not manifestly unreasonable" substituted "if they" for "provided such standards"; in (4) at end inserted ", pledge, or release"; and made grammatical changes.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.

30-8-403. Issuer's duty as to adverse claims. (1) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or reregistered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under 30-8-402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under 30-8-402(4) or receives notification of an adverse claim under subsection (1) of this section, if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under 30-8-402(4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

(a) including a notation of the claim in any statements sent with respect to the security under 30-8-408(3), (6), and (7); and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under 30-8-408.

(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim

if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under 30-8-402(4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner.

History: En. Sec. 8-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-403; amd. Sec. 48, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, rewrote from "Limited duty of inquiry"; in (1) before "security" inserted "certificated", and substituted "shall" for "is under a duty to"; in (1)(a), (2), (3), and (3)(a) before "security" inserted "certificated"; in (2)(b) at beginning inserted "there is filed with the issuer" and at end deleted same phrase; inserted (4) through (7); and made grammatical changes.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Notice to purchaser of adverse claims, 30-8-304.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Liability and nonliability for registration, 30-8-404.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Statements of uncertificated securities, 30-8-408.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Issuer, 30-8-201.
Notice, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Written, 30-1-201.

30-8-404. Liability and nonliability for registration. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

(a) there were on or with a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (30-8-308); and

(b) the issuer had no duty as to adverse claims or has discharged the duty (30-8-403).

(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1);

(b) the owner is precluded from asserting any claim for registering the transfer under 30-8-405(1); or

(c) the delivery would result in overissue, in which case the issuer's liability is governed by 30-8-104.

(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(a) the registration was pursuant to subsection (1); or

(b) the registration would result in overissue, in which case the issuer's liability is governed by 30-8-104.

History: **En. Sec. 8-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-404; amd. Sec. 49, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), after "owner" inserted ", pledgee,", and near end after "transfer" inserted ", pledge, or release"; in (1)(a) before "security" inserted "certificated", and after "necessary endorsements" inserted "or the issuer had received an instruction originated by an appropriate person"; in (1)(b) after "had no duty" substituted "as to" for "to inquire into"; in (2) before "security" inserted "certificated"; inserted (3); and made grammatical changes.

Cross-References

GENERAL

Effect of unauthorized endorsement or instruction, 30-8-311.

Assurance that endorsements and instructions are effective, 30-8-402.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Exchangeability of securities, 30-8-407.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Deliver, 30-1-201.
Endorsement, 30-8-308.
Issuer, 30-8-201.
Overissue, 30-8-104.
Party, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-405. Lost, destroyed, and stolen certificated securities. (1) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under 30-8-404 or any claim to a new security under this section.

(2) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by 30-8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

History: **En. Sec. 8-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-405; amd. Sec. 50, Ch. 402, L. 1983; amd. Sec. 7, Ch. 80, L. 1985.**

Compiler's Comments

1985 Amendment: In (1) inserted "certificated" before "security".

1983 Amendment: In catchline, before "securities" inserted "certificated"; in (2) in two places before "securities" inserted "certificated", and inserted "or, at the option of the issuer, an equivalent uncertificated security"; in (3) near beginning inserted "certificated or uncertificated", in two places before "security" inserted "certificated", and at end inserted "or may cancel ... registered pledgee thereof"; and made grammatical changes.

Cross-References

GENERAL

Effect of unauthorized endorsement or instruction, 30-8-311.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Assurance that endorsements and instructions are effective, 30-8-402.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

Exchangeability of securities, 30-8-407.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Issuer, 30-8-201.
Notice, 30-1-201.
Notify, 30-1-201.
Overissue, 30-8-104.
Person, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-406. Duty of authenticating trustee, transfer agent, or registrar. (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) with regard to the particular functions he performs, he has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar, or other agent is notice to the issuer with respect to the functions performed by the agent.

History: En. Sec. 8-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-406; amd. Sec. 51, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities," for "transfers of its securities"; in (1)(b) substituted "owner of a certificated security or to the owner or pledgee of an uncertificated security" for "owner of the security"; and made grammatical changes.

Cross-References

GENERAL

Rights and duties of issuer with respect to registered owners and registered pledgees, 30-8-207.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Assurance that endorsements and instructions are effective, 30-8-402.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Exchangeability of securities, 30-8-407.

Statements of uncertificated securities, 30-8-408.

DEFINITIONAL

Certificated security, 30-8-102.
Good faith, 30-1-201.
Holder, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-407. Exchangeability of securities. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (30-8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

History: En. Sec. 52, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue, 30-8-104.

Limited duty of inquiry — security presented to issuer for registration, 30-8-403.

Lost, destroyed and stolen securities, 30-8-405.

DEFINITIONAL

Adverse claim, 30-8-302.
Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Instruction, 30-8-308.
Issuer, 30-8-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Written, 30-1-201.

30-8-408. Statements of uncertificated securities. (1) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the transfer was registered.

(2) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1), the registered pledgee pursuant to subsection (2), or the registered owner pursuant to subsection (3). Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

History: En. Sec. 53, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Securities negotiable — presumptions, 30-8-105.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of issuer's restrictions on transfer, 30-8-204.

Effect of unauthorized signature on issue, 30-8-205.

Completion or alteration of instrument, 30-8-206.

Right of issuer with respect to registered owners, 30-8-207.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Notice to purchaser of adverse claims, 30-8-304.

DEFINITIONAL

Adverse claim, 30-8-302.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Issuer, 30-8-201.
Rights, 30-1-201.
Security, 30-8-102.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Written, 30-1-201.

CHAPTER 9

UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS SALES OF ACCOUNTS AND CHATTEL PAPER

Part 1 — Short Title, Applicability, and Definitions

Section
30-9-101. Short title.
30-9-102. Policy and subject matter of chapter.

30-9-103. Perfection of security interests in multiple state transactions.
30-9-104. Transactions excluded from chapter.
30-9-105. Definitions and index of definitions.
30-9-106. Definitions — "account" — "general intangibles".
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30-9-109. Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory".
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30-9-208. Request for statement of account or list of collateral.

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30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply.
30-9-303. When security interest is perfected — continuity of perfection.
30-9-304. Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession.
30-9-305. When possession by secured party perfects security interest without filing.
30-9-306. "Proceeds" — secured party's rights on disposition of collateral.
30-9-307. Protection of buyers of goods.
30-9-308. Purchase of chattel paper and instruments.
30-9-309. Protection of purchasers of instruments, documents, and securities.
30-9-310. Priority of certain liens arising by operation of law.
30-9-311. Alienability of debtor's rights — judicial process.
30-9-312. Priorities among conflicting security interests in the same collateral.
30-9-313. Priority of security interests in fixtures.
30-9-314. Accessions.
30-9-315. Priority when goods are commingled or processed.
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Part 5 — Default

30-9-501. Default — procedure when security agreement covers both real and personal property.
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30-9-503. Secured party's right to take possession after default.
30-9-504. Secured party's right to dispose of collateral after default — effect of disposition.
30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation.
30-9-506. Debtor's right to redeem collateral.
30-9-507. Secured party's liability for failure to comply with this part.
30-9-508. Foreclosure of security interests in personal property.
30-9-509. Repealed.
30-9-510. Repealed.
30-9-511. Counsel fees on foreclosure.

Chapter Cross-References

Sales, Title 30, ch. 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Credit transactions, Title 31, ch. 1.

Debtor and creditor relationships, Title 31, ch. 2.

Related credit practices, Title 31, ch. 3.

Defrauding secured creditors — crime — penalty, 45-6-315.

Financing sales of motor vehicles, Title 61, ch. 4, part 4.

Mortgages, pledges, and liens, Title 71.

Trusts, Title 72, ch. 20 through 24.

Part 1

Short Title, Applicability, and Definitions

30-9-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

History: En. Sec. 9-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-101.

30-9-102. Policy and subject matter of chapter. (1) Except as otherwise provided in 30-9-104 on excluded transactions, this chapter applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper, or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention

contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in 30-9-310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

History: **En. Sec. 9-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-102; amd. Sec. 54, Ch. 402, L. 1983.**

Compiler's Comments

1983 Amendment: In catchline, substituted "subject matter" for "scope"; in (1) after "otherwise provided" deleted "in 30-9-103 on multiple state transactions and", and from end deleted "so far as concerns any personal property and fixtures within the jurisdiction of this state"; in (1)(a) near end after "accounts" deleted "or contract rights"; in (1)(b) after "accounts" deleted ", contract rights"; and made a grammatical change.

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Applicability of U.C.C. to mortgages, 71-1-112.

DEFINITIONAL

Account	30-9-106.
Chattel paper	30-9-105.
Contract	30-1-201.
Document	30-9-105.
General intangibles	30-9-106.
Goods	30-9-105.
Instrument	30-9-105.
Security interest	30-1-201.

30-9-103. Perfection of security interests in multiple state transactions. (1) (a) Subsection (1) applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

(2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) (a) Subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery, and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

History: En. Sec. 9-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-103; amd. Sec. 55, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Present language replaced entire former section, which read: "Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest. (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this chapter; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this chapter governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in

this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for 4 months and also thereafter if within the 4-month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the 4-month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate."

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Applicable laws (mortgages — general provisions), 71-1-112.

DEFINITIONAL

Accounts, 30-9-106.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Document, 30-9-105.
Equipment, 30-9-109.
General intangibles, 30-9-106.
Goods, 30-9-105.
Inventory, 30-9-109.
Purchase money security interest, 30-9-107.
Purchaser, 30-1-201.
Security interest, 30-1-201.

30-9-104. Transactions excluded from chapter. This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;

(11) to a transfer in whole or in part of any claim arising out of tort; or

(12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312).

History: En. Sec. 9-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-104; amd. Sec. 56, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Redesignated subsections from letters to numbers; in (5) substituted present language for "to an equipment trust covering railway rolling stock"; in (6) in two places following "accounts" deleted ", contract rights", near middle substituted "right to payment under a contract" for "contract right", and at end inserted ", or a transfer . . ."; in (7) at end inserted ", except as provided . . ."; in (8) at end inserted parenthetical language; in (11) following "part of" deleted "any of the following:", and after "tort;" deleted "any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization"; inserted (12); and made grammatical changes.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-9-105. Definitions and index of definitions. (1) In this chapter, the following definitions apply unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. When the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in the general definitions of chapter 1 (30-1-201) and a receipt of the kind described in 30-7-201(2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument (defined in 30-3-104), or a certificated security (defined in 30-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business; the electric or electronics communications transmission business; the transmission of goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or water or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.
"Attach". 30-9-203.
"Construction mortgage". 30-9-313(1).
"Consumer goods". 30-9-109(1).
"Equipment". 30-9-109(2).
"Farm products". 30-9-109(3).
"Fixture". 30-9-313(1).
"Fixture filing". 30-9-313.
"General intangibles". 30-9-106.
"Inventory". 30-9-109(4).
"Lien creditor". 30-9-301(3).
"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.
"United States". 30-9-103.

(3) The following definitions in other chapters apply to this chapter:
"Check". 30-3-104.
"Contract for sale". 30-2-106.
"Holder in due course". 30-3-302.
"Note". 30-3-104.
"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 9-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-105; amd. Sec. 3, Ch. 137, L. 1979; amd. Sec. 57, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), before "or general intangible" deleted "contract right"; in (1)(b) at end of first sentence inserted ", but a charter or other contract involving the use or hire of a vessel is not chattel paper"; in (1)(c) and (d) after "accounts" deleted ", contract rights"; inserted (1)(e); in (1)(f) substituted "the general definitions of chapter 1 (30-1-201) and a receipt of the kind described in 30-7-201(2)" for "30-1-201(15)"; inserted (1)(g); in (1)(h) after "general intangibles" substituted "or minerals or the like (including oil and gas) before extraction" for "contract rights and other things in action", and in last sentence inserted "standing timber that is to be cut and removed under a conveyance or contract for sale,"; in (1)(i) before "security" inserted "certificated"; inserted (1)(j) and (k); in (1)(m) after "accounts" deleted ", contract rights"; inserted (1)(n); in (2) inserted provisions on "Attach", "Construction mortgage", "Fixture", "Fixture filing", "United States", and deleted "Contract right. 30-9-106".

Cross-References

GENERAL

Terms which include U.C.C. security interests, Title 1, ch. 1, part 2.

Goods to be severed from realty — recording, 30-2-107.

Transactions excluded from chapter, 30-9-104.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

Where collateral is not owned by debtor, 30-9-112.

When security interest is perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Document of title, 30-1-201.
General intangibles, 30-9-106.
Holder, 30-1-201.
Money, 30-1-201.
Negotiable instrument, 30-3-104.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Writing, 30-1-201.

30-9-106. Definitions — "account" — "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

History: En. Sec. 9-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-106; amd. Sec. 58, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, after "'account' —" deleted "'contract right' —"; at end of first sentence inserted ", whether or not it has been earned by performance"; deleted former second sentence, which read "'Contract right' means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper."; in definition of "General intangibles" at end of first sentence substituted "chattel paper, documents, instruments and money" for "contract rights, chattel paper, documents and instruments"; and inserted last sentence.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Transactions excluded from chapter, 30-9-104.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment, 30-9-318.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Chattel paper, 30-9-105.
Contract, 30-1-201.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.

30-9-107. Definitions — "purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

History: En. Sec. 9-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-107.

Cross-References

GENERAL

When after-acquired collateral not security for antecedent debt, 30-9-108.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-108. When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

History: En. Sec. 9-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-108.

Cross-References

GENERAL

Definitions — "purchase money security interest", 30-9-107.

After-acquired property — future advances, 30-9-204.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Lien on future interest, 71-3-105.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Debtor, 30-9-105.

Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-109. Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory". Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

History: En. Sec. 9-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-109.

Cross-References

GENERAL

"Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter, 30-6-102.

Policy and subject matter of chapter, 30-9-102.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Contract, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Organization, 30-1-201.
Person, 30-1-201.
Sale, 30-2-106.

30-9-110. Sufficiency of description. For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

History: En. Sec. 9-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-110.

Cross-References

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

30-9-111. Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under Chapter 6.

History: En. Sec. 9-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-111.

Cross-References

GENERAL

Transfers excepted from this chapter (bulk transfers), 30-6-103.

DEFINITIONAL

Security interest, 30-1-201.

30-9-112. Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under 30-9-502(2) or under 30-9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under 30-9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under 30-9-505;

(c) to redeem the collateral under 30-9-506;

(d) to obtain injunctive or other relief under 30-9-507(1); and

(e) to recover losses caused to him under 30-9-208(2).

History: En. Sec. 9-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-112.

Cross-References

GENERAL

Default, Title 30, ch. 9, part 5.
Certain contracts void, 71-3-109.
Right to redeem, 71-3-117.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Notice, 30-1-201.
Person, 30-1-201.
Receive notice, 30-1-201.
Right, 30-1-201.
Secured party, 30-9-105.

30-9-113. Security interests arising under chapter on sales. A security interest arising solely under the chapter on sales (chapter 2) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the chapter on sales (chapter 2).

History: En. Sec. 9-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-113.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Seller's shipment under reservation, 30-2-505.

Rights of financing agency, 30-2-506.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Seller's resale including contract for resale, 30-2-706.

Person in the position of a seller, 30-2-707.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Policy and subject matter of chapter, 30-9-102.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Debtor, 30-9-105.
Goods, 30-9-105.

Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-114. Consignment. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by 30-2-326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) the consignor complies with the filing provision of the Chapter on Sales with respect to consignments (30-2-326(3)(c)) before the consignee receives possession of the goods;

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor;

(c) the holder of the security interest receives the notification within 5 years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of subsection (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

History: En. Sec. 59, Ch. 402, L. 1983.

Cross-References

GENERAL

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Priorities among conflicting security interests — inventory collateral, 30-9-312(2).

DEFINITIONAL

Consignment, 30-1-201(37).
Debtor, 30-9-105.
Goods, 30-9-105.
Notification, 30-1-201 (26).
Proceeds, 30-9-306.
Security interest, 30-1-201(37).

Part 2

Validity of Security Agreement and Rights of Parties Thereto

30-9-201. General validity of security agreement. Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History: En. Sec. 9-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-201.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Passing of title — reservation for security — limited application of this section, 30-2-401.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312..

DEFINITIONAL

Collateral, 30-9-105.
Creditor, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Security agreement, 30-9-105.

30-9-202. Title to collateral immaterial. Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

History: En. Sec. 9-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-202.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Effect of seller's tender — delivery on condition, 30-2-507.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.

30-9-203. Attachment and enforceability of security interest — proceeds, formal requisites. (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-8-321 on security interests in securities, and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

History: En. Sec. 9-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-203; amd. Sec. 60, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, at beginning inserted "Attachment and"; in (1) after "collecting bank" inserted ", 30-8-321 on security interests in securities,", and near end inserted "with respect to the collateral and does not attach"; in (1)(a) after "secured party" combined former (1)(b) and inserted "pursuant to agreement or"; near end of (1)(a) substituted "growing or to be grown" for "or oil, gas or minerals to be extracted", and deleted last sentence, which read: "In describing the collateral, the word 'proceeds' is sufficient without further description to cover proceeds of any character."; inserted (1)(b), (1)(c), (2), and (3); in (4) inserted "Title 16, chapters 1 through 6,".

Cross-References

GENERAL

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Sufficiency of description, 30-9-110.

Security interests arising under chapter on sales, 30-9-113.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights and disposition of collateral, 30-9-306.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-204. After-acquired property — future advances. (1) Except as provided in subsection (2) a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (30-9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (30-9-105(1)).

History: En. Sec. 9-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-204; amd. Sec. 61, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, at beginning deleted "When security interest attaches —"; deleted former (1) and (2), which read: "(1) A security interest cannot attach until there is agreement (subsection (3) of 30-1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights:

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence."; in (1) before "all obligations" substituted "any or" for "collateral, whenever acquired, shall secure", and at end inserted "are to be secured by after-acquired collateral"; in (2) deleted former (a), which read: "to crops which become such more than 1 year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;"; at end of (3) inserted cite; and made grammatical changes.

Cross-References

GENERAL

When after-required collateral not security for antecedent debt, 30-9-108.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

Sufficiency of description, 30-9-110.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Lien on future interest, 71-3-105.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-205. Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle, or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History: En. Sec. 9-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-205; amd. Sec. 62, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: After "compromise accounts" deleted ", contract rights".

Cross-References

GENERAL

General validity of security agreement, 30-9-201.

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priority when goods commingled or processed, 30-9-315.

Secured party not obligated on contract of debtor, 30-9-317.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-206. Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

History: En. Sec. 9-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-206.

Cross-References

GENERAL

Scope — certain security and other transactions excluded from chapter 2, 30-2-102.

Exclusion or modification of warranties, 30-2-316.

Rights of a holder in due course, 30-3-305.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

DEFINITIONAL

Agreement, 30-1-201.
Consumer goods, 30-9-109.
Good faith, 30-1-201.
Goods, 30-9-105.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Negotiable instrument, 30-3-104.
Notice, 30-1-201.
Purchase money security interest, 30-9-107.
Sale, 30-2-106.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-207. Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History: En. Sec. 9-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-207.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Transfer — right to endorsement, 30-3-201.

Delivery without endorsement — right to compel endorsement, 30-7-506.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

Priority when goods are commingled or processed, 30-9-315.

Default, Title 30, ch. 9, part 5.

Defrauding creditors, 45-6-315.

Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Money, 30-1-201.
Party, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-208. Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

History: En. Sec. 9-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-208.

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Good faith, 30-1-201.
Know, 30-1-201.
Person, 30-1-201.
Receive, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Written, 30-1-201.

Part 3

Rights of Third Parties — Perfected and Unperfected Security Interests — Rules of Priority

Part Cross-References

Priority of income withholding order for enforcement of child support, 40-5-423.

30-9-301. Persons who take priority over unperfected security interests — right of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

History: En. Sec. 9-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-301; amd. Sec. 1, Ch. 406, L. 1979; amd. Sec. 63, Ch. 402, L. 1983; amd. Sec. 1, Ch. 167, L. 1985.

Compiler's Comments

1985 Amendment: In (2) increased filing time from 10 days to 20 days after possession of collateral.

1983 Amendment: In catchline, before "'lien creditor'" inserted "right of"; in (1)(b) after "lien creditor" deleted "without knowledge of the security interest and"; in (1)(c) before "to the extent that" inserted "or is a buyer of farm products in ordinary course of business,"; in (1)(d) after "accounts" deleted ", contract rights,"; in (2) reduced number of days from 20 to 10, and substituted "debtor receives possession of the collateral" for "collateral comes into possession of the debtor"; in (3) deleted last sentence, which read: "Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest."; inserted (4); and made grammatical changes.

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

When security interest is perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priority of claims against liquidated bank, 32-1-534.

Priority of income withholding order for enforcement of child support, 40-5-423.

Liens, Title 71, ch. 3.

Possession under a mortgage — how acquired, 81-8-312.

DEFINITIONAL

Account, 30-9-106.

Buyer in ordinary course of business, 30-1-201.

Chattel paper, 30-9-105.

Collateral, 30-9-105.

Creditor, 30-1-201.

Delivery, 30-1-201.

Document, 30-9-105.

General intangibles, 30-9-106.

Goods, 30-9-105.

Instrument, 30-9-105.

Knowledge, 30-1-201.

Person, 30-1-201.

Purchase money security interest, 30-9-107.

Representative, 30-1-201.

Rights, 30-1-201.

Secured party, 30-9-105.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 30-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (30-4-208), in securities (30-8-321), or arising under the Chapter on Sales or covered in subsection (3) of this section;

(g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

History: En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302; amd. Sec. 64, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Changed (1)(c), from "a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under 30-9-313 or for a motor vehicle required to be licensed"; in (1)(d) before "a motor vehicle" deleted "a fixture under 30-9-313 or for", substituted "registered" for "licensed", and at end inserted "and fixture filing is required ..."; in (1)(e) after "accounts" deleted "or contract rights" in two places; in (1)(f) inserted ", in securities (30-8-321),"; inserted (1)(g); substituted (3) and (4) for former (3) and (4), which read: "(3) Except for financing statements filed pursuant to 30-9-409, the filing provisions of this chapter do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) Except for financing statements filed pursuant to 30-9-409, a security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official."

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Security interests arising under chapter on sales, 30-9-113.

When security interest is perfected — continuity of perfection, 30-9-303.

Protection of buyers of goods, 30-9-307.

Filing, Title 30, ch. 9, part 4.

Motor vehicles, mortgage filed with registrar, 61-3-103.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Creditor, 30-1-201.
Debtor, 30-9-105.
Delivery, 30-1-201.
Document, 30-9-105.
Equipment, 30-9-109.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Instrument, 30-9-105.
Inventory, 30-9-109.
Proceeds, 30-9-306.
Purchase, 30-1-201.
Purchase money security interest, 30-9-107.
Sale, 30-2-106.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-303. When security interest is perfected — continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in 30-9-302, 30-9-304, 30-9-305 and 30-9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

History: En. Sec. 9-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-303.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

After-acquired property — future advances, 30-9-204.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Security interest, 30-1-201.

30-9-304. Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 30-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter.

History: En. Sec. 9-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-304; amd. Sec. 65, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), in second sentence after "interest in" inserted "money or" and in parenthetical material inserted "certificated securities or", and at end inserted "of this section and subsections (2) and (3) of 30-9-306 on proceeds"; in (4) and (5) inserted parenthetical material; in (5)(a) at end inserted "; but priority between conflicting security interests in the goods is subject to 30-9-312(3)".

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

When security interest is perfected — continuity of perfection, 30-9-303.

When possession by secured party perfects security interest without filing, 30-9-305.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Financing programs of housing — community planning, 90-6-108.

DEFINITIONAL

Chattel paper, 30-9-105.
Debtor, 30-9-105.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.
Receives notification, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-305. When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection 30-5-116(2)(a)), goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

History: En. Sec. 9-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-305; amd. Sec. 66, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence inserted "(other than certificated securities), money".

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

When security interest is perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Instruments, 30-9-105.
Receives notification, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-306. "Proceeds" — secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) (a) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(i) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(iii) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under (4)(a) through (4)(c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

History: En. Sec. 9-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-306; amd. Sec. 67, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), changed first sentence from "'Proceeds' includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of", inserted second sentence, and deleted former second sentence, which read: "The term also includes the account arising when the right to payment is earned under a contract right."; near end after "Money, checks" inserted ", deposit accounts,"; in (2) after "disposition thereof" substituted "unless the disposition" for "by the debtor unless his action"; in (3)(a)(i) changed present language from "a filed financing statement covering the original collateral also covers proceeds"; inserted (3)(a)(ii); inserted (3)(b); at end of (4) inserted "only in the following proceeds"; at end of (4)(a) inserted "and in separate deposit accounts containing only proceeds"; in (4)(b) and (c) substituted "deposit account" for "bank account"; in (4)(d) substituted "deposit accounts of the debtor in which proceeds have been commingled with other funds" for "bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account"; in (4)(d)(ii) after "insolvency proceedings" deleted "and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period" and inserted "less the sum of:" and (A) and (B); and made grammatical changes.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Account, 30-9-106.
Bank, 30-1-201.
Chattel paper, 30-9-105.
Check, 30-3-104.

Collateral, 30-9-105.
Creditors, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Insolvency proceedings, 30-1-201.
Money, 30-1-201.
Purchaser, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-307. Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of 30-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2,500 (other than fixtures, see 30-9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

History: En. Sec. 9-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-307.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Consumer goods, 30-9-109.
Goods, 30-9-105.
Knows and knowledge, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-308. Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(1) which is perfected under 30-9-304 (permissive filing and temporary perfection) or under 30-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the specific paper is subject to the security interest.

History: En. Sec. 9-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-308; amd. Sec. 68, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, before "instruments" deleted "nonnegotiable"; in introductory material of section before "instrument" deleted "nonnegotiable", after "course of his business" deleted "and without knowledge that the specific paper or instrument is subject to a security interest", at end inserted "in the chattel paper or instrument"; and divided remainder of section into (1) and (2); in (1) after "perfection)" deleted ". A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper" and inserted rest of (1); and made grammatical changes.

Cross-References

GENERAL

When possession by secured party perfects security interest without filing, 30-9-305.

DEFINITIONAL

Chattel paper, 30-9-105.
Instrument, 30-9-105.
Inventory, 30-9-109.
Knowledge, 30-1-201.
Proceeds, 30-9-306.
Purchaser, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-309. Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a bona fide purchaser of a security (30-8-302), and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

History: En. Sec. 9-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-309; amd. Sec. 69, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, after "documents" inserted ", and securities"; substituted "(30-8-302)" for "(30-8-301)".

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Document of title, 30-1-201.
Duly negotiated, 30-7-501.
Holder, 30-1-201.
Holder in due course, 30-3-302, 30-9-105.
Negotiable instrument, 30-3-104.
Notice, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.

30-9-310. Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

History: En. Sec. 9-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-310.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Priorities among conflicting security interests in the same collateral, 30-9-312.

How liens created, 71-3-102.

No lien for claim not due, 71-3-103.

DEFINITIONAL

Goods, 30-9-105.
Person, 30-1-201.
Security interest, 30-1-201.

30-9-311. Alienability of debtor's rights — judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

History: **En. Sec. 9-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-311.**

Cross-References

GENERAL

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Rights, 30-1-201.
Sale, 30-2-106.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this part and in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and 30-9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the

special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 30-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

History: En. Sec. 9-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-312; amd. Sec. 2, Ch. 406, L. 1979; amd. Sec. 70, Ch. 402, L. 1983; amd. Sec. 8, Ch. 80, L. 1985; amd. Sec. 2, Ch. 167, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 80 in (6) substituted "filing or perfection as to proceeds" for "filing as to proceeds".

Chapter 167 in (4) increased number of days from 10 to 20.

1983 Amendment: In (1), after "priority stated" inserted "in other sections of this part and"; after "documents, and proceeds;" inserted "30-9-103 on security interest related to other jurisdictions; and 30-9-114 on consignments" and deleted "30-9-301 on certain priorities; 30-9-304 on goods covered by documents; 30-9-306 on proceeds and repossessions; 30-9-307 on buyers of goods; 30-9-308 on possessory against nonpossessory interests in chattel paper or nonnegotiable instruments; 30-9-309 on security interests in negotiable instruments, documents or securities; 30-9-310 on priorities between perfected security interests and liens by operation of law; 30-9-313 on security interests in fixtures as against interests in real estate; 30-9-314 on security interests in accessions as against interest in goods; 30-9-315 on conflicting security interests where goods lose their identity or become part of a product; and 30-9-316 on contractual subordination"; in (3) near beginning before "purchase" inserted "perfected", after "security interest in inventory" deleted "collateral", and near end substituted "inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer" for "collateral"; in (3)(a) near end substituted "inventory" for "collateral"; divided (3)(b) into (3)(b), (3)(b)(i), and (3)(c) and rewrote from "any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest"; inserted (3)(b)(ii); in (4) after "same collateral" inserted "or its proceeds", and decreased number of days from 20 to 10; in (5) at end substituted "according to the following rules" for "as follows"; in (5)(a) rewrote from "in the order of filing if both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and whether it attached before or after filing"; deleted former (5)(b), which read: "in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and"; in (5)(b) rewrote from "(c) in the order of attachment under 30-9-204(1) so long as neither is perfected"; in (6) rewrote from "For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing."; inserted (7); and made grammatical changes.

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Perfection of security interest in multiple state jurisdictions, 30-9-103.

When after-acquired collateral not security for antecedent debt, 30-9-108.

Consignment, 30-9-114.

When security interest is perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Collecting bank, 30-4-105.
Debtor, 30-9-105.
Documents, 30-9-105.
Give notice, 30-1-201.
Goods, 30-9-105.
Instruments, 30-9-105.
Inventory, 30-9-109.
Knowledge, 30-1-201.
Person, 30-1-201.
Proceeds, 30-9-306.
Purchase money security interest, 30-9-107.
Receives notification, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-313. Priority of security interests in fixtures. (1) In this section and in the provisions of part 4 of this chapter referring to fixture filing, unless the context otherwise requires:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of real estate if:

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: En. Sec. 9-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-313; amd. Sec. 71, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1) and (2), rewrote from "(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metalwork and the like and no security interest in them exists under this chapter unless the structure remains personal property under applicable law. The law of this state other than this code determines whether and when other goods become fixtures. This code does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4)."; deleted former (3) and (4), which read: "(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over:

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section."; inserted present (3) through (7); in (8) renumbered from (5), at beginning after "When" deleted "under subsections (2) or (3) and (4) a", and near beginning after "has priority over" substituted "all owners and encumbrancers of" for "the claims of all persons who have interests in"; and made grammatical changes.

Cross-References

GENERAL

Goods to be severed from realty — recording, 30-2-107.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

After-acquired property — future advances, 30-9-204.

Security interest, when perfected, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Filing, Title 30, ch. 9, part 4.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-314. Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to 30-9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any

diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: **En. Sec. 9-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-314.**

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest is perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-315. Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under 30-9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

History: **En. Sec. 9-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-315.**

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest is perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Goods, 30-9-105.
Security interest, 30-1-201.

30-9-316. Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History: **En. Sec. 9-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-316.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Agreement, 30-1-201.
Person, 30-1-201.

30-9-317. Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

History: En. Sec. 9-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-317.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Debtor, 30-9-105.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

History: En. Sec. 9-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-318; amd. Sec. 72, Ch. 402, L. 1983; amd. Sec. 9, Ch. 80, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted "ineffective" for "effective".

1983 Amendment: In (2), near beginning substituted "payment or a part thereof under an assigned contract has not been fully earned by performance" for "payment under an assigned contract right has not already become an account"; in (3) in first sentence substituted "amount due or to become due" for "account"; in (4) rewrote from "A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective."

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

Transfer and assignment, 30-5-116.

Use or disposition of collateral without accounting permissible, 30-9-205.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Contract, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Seasonably, 30-1-204.
Term, 30-1-201.

Part 4

Filing

30-9-401. *(Temporary)* **Place of filing — erroneous filing — removal of collateral.** (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown, in the office of the county clerk and recorder in the county where the land is located;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business.

30-9-401. *(Effective July 1, 1986)* **Place of filing — erroneous filing — removal of collateral.** (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business.

History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-401; amd. Sec. 73, Ch. 402, L. 1983; amd. Sec. 1, Ch. 683, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(a), near beginning after "collateral is" deleted "equipment used in farming operations, or farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, or" and at end after "kept" deleted "and in addition when the collateral is crops growing or to be grown, in the office of the county clerk and recorder in the county where the land is located". Amendment effective July 1, 1986 (sec. 10, Ch. 683, L. 1985).

1983 Amendment: In (1)(a), near beginning after "accounts" (now deleted) deleted "contract rights,", near end after "crops" inserted "growing or to be grown," (deleted by 1985 amendment), and very near end before "is located" (deleted by 1985 amendment) deleted "on which the crops are growing or to be grown"; in (1)(b) after "collateral is" substituted "timber to be cut . . . and the collateral is goods which" for "goods which at the time the security interest attaches", and after "real estate" deleted "concerned"; in (4) at beginning deleted "If collateral is brought into this state from another jurisdiction,"; inserted (5).

Cross-References

GENERAL

Fees of county clerk, 7-4-2631.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Protection of buyers of goods, 30-9-307.

Priority of security interests in fixtures, 30-9-313.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

Motor vehicles — conditional sales contracts, 61-3-103.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Equipment, 30-9-109.
Farm products, 30-9-109.
Financing statement, 30-9-402.
Fixture filing, 30-9-313.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to 30-9-409 when the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ....
Address ....
Name of secured party (or assignee) ....
Address ....

1. This financing statement covers the following types (or items) of property:

(Describe) ....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) ....

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) ....

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is ....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever Signature of Debtor (or Assignor) ....
is applicable) Signature of Secured Party (or Assignee) ....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A

filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967; R.C.M. 1947, 87A-9-402; amd. Sec. 74, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In catchline, inserted "— mortgage as financing statement"; in (1) near beginning after "sufficient if it" inserted "gives the names of the debtor and the secured party,", after "signed by the debtor" deleted "and the secured party", in third sentence after "growing or to be grown" deleted "or goods which are or are to become fixtures" and at end of third sentence after "real estate concerned" deleted "and the name of the record owner or record lessee thereof", inserted next-to-last sentence that begins "When the financing statement covers timber . . .", and at end substituted "the debtor" for "both parties"; in (2) substituted "sufficient when it is signed by the secured party instead of the debtor if" for "sufficient although it is signed only by the secured party when"; in (2)(a) at end of first sentence inserted "or when the debtor's location is changed to this state,", and before "under such circumstances" inserted "or that the debtor's location was changed to this state"; inserted (2)(c) and (d); in (3) deleted from list "Name of record owner or record lessee .... Address ...."; in (3) 3. in first parenthetical phrase substituted "applicable" for "collateral is goods which are or are to become fixtures", after "applicable) The above" substituted present language for "described goods are affixed or to be affixed to:", and inserted "and this financing statement is to be filed ... The name of a record owner is ...."; in (3) 4. after "(If" deleted "proceeds or", before "Products" deleted "Proceeds —", and inserted before signature lines "(Use whichever is applicable)"; in (4) at beginning deleted "The term 'financing statement' as used in this chapter means the original financing statement and any amendments but" and inserted first sentence and last sentence; inserted (5) through (7); renumbered former (5) to (8); and made grammatical changes.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Sufficiency of description, 30-9-110.

Request for statement of account or list of collateral, 30-9-208.

Alienability of debtor's rights — judicial process, 30-9-311.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Goods, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-403. *(Temporary)* **What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60

days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (8) and must include fees for:

(a) an original financing or continuation statement in standard form;

(b) a termination statement in standard form;

(c) a financing statement indicating an assignment in standard form;

(d) a statement of release of collateral in standard form;

(e) a certificate from the filing officer showing that an effective financing statement is on file, requested in the standard form;

(f) any of the documents in (a) through (e) other than in standard form;

(g) each name more than one required to be indexed;

(h) a uniform indexing fee for showing a trade name for any person; and

(i) any of the filing and indexing in subsections (a), (b), or (d) where the collateral is equipment or rolling stock of railroads or street railways.

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate

mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees for filing and indexing documents as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall disseminate the uniform fees to the county clerk and recorders for their use.

30-9-403. *(Effective July 1, 1986)* **What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsections (6) and (10), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon

it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) Except as provided in subsection (8), the uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (12) and must include fees for:

(a) an original financing or continuation statement in standard form;

(b) a termination statement in standard form;

(c) a financing statement indicating an assignment in standard form;

(d) a statement of release of collateral in standard form;

(e) a certificate from the filing officer showing that an effective financing statement is on file, requested in the standard form;

(f) any of the documents in (a) through (e) other than in standard form;

(g) each name more than one required to be indexed;

(h) a uniform indexing fee for showing a trade name for any person; and

(i) any of the filing and indexing in subsections (a), (b), or (d) where the collateral is equipment or rolling stock of railroads or street railways.

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising

from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9). The secretary of state shall deposit all fees he collects in the state treasury, and the fee money is allocated to the secretary of state to pay the expenses of establishing and operating the computerized access system.

(9) Within one working day of receipt of a financing or continuation statement described in subsection (8), the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish and he shall mail a certified copy of the financing or continuation statement, with the filing fee provided in subsection (5), to the clerk and recorder of the debtor's county. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest in the collateral described in subsection (8) is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents as provided in 30-9-422.

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees for filing and indexing documents as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall disseminate the uniform fees to the county clerk and recorders for their use.

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-403; amd. Sec. 75, Ch. 402, L. 1983; amd. Sec. 2, Ch. 119, L. 1985; amd. Sec. 2, Ch. 683, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 119 in (5) near end of lead-in, substituted "set pursuant to subsection (8) [(12)] and must include fees for" for "the following amounts for" and deleted specific dollar fees in (a) through (i), which were $2 in (a) through (d) and (g) and (h), $3 in (e), $2 additional fee in (f), and $15 in (i); and inserted (8) in temporary version ((12) in version effective 7-1-86).

Chapter 683 in (2) near beginning after "provided in" substituted "subsections (6) and (10)" for "subsection (6)"; in (5) at beginning inserted exception clause; and inserted (8) through (11). Amendment effective July 1, 1986 (sec. 10, Ch. 683, L. 1985).

1983 Amendment: In (2), rewrote from "A filed financing statement which states a maturity date of the obligation secured of 5 years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60-day period after a stated maturity date or on the expiration of such 5-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for 5 years from the date of filing."; in (3) in first sentence after "secured party" deleted "(i) within 6 months before and 60 days after a stated maturity date of 5 years of less, and (ii) otherwise", inserted the third sentence which begins "A continuation statement signed ..."; and near end inserted all present language after "lapsed statement from the files and destroy it"; in (4) at beginning inserted exception clause, before "file number" deleted "consecutive", and before "for public inspection" inserted "or a microfilm or other photographic copy thereof"; deleted former (5) and (6), which read: "(5) Except financing statements filed pursuant to 30-9-409, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be $15. In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $2."; and inserted (5) through (7).

Cross-References

GENERAL

Perfection of security interest in multiple state jurisdictions, 30-9-103.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

DEFINITIONAL

Debtor, 30-9-105.
Financing statement, 30-9-402.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-404. Termination statement. (1) If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with 30-9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection or to send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party, stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be set pursuant to 30-9-403.

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-404; amd. Sec. 76, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted first sentence and "In other cases," at beginning of second sentence, after "send the debtor" substituted ", for each filing officer with whom the financing statement was filed, a termination statement to the effect" for "a statement", at end of second sentence after "identified by file number" deleted ", and by document number, as the case may be", near end of (1) substituted "record must be accompanied by ... as required by this subsection or to send" for "record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be $2. If the affected secured party fails to send"; in (2) after first sentence, substituted present language for "The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages."; in (3) at beginning deleted "If the collateral is equipment or rolling stock of railroads or street railways,", inserted "uniform" before "fee", after "termination statement" deleted "including sending or delivering the financing statement", at end substituted "set pursuant to 30-9-403" for "$15", deleted last sentence, which read: "In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $2."; and made grammatical changes.

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Consumer goods, 30-9-109.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-405. Assignment of security interest — duties of filing officer — fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 30-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be set pursuant to 30-9-403.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 30-9-409(2), containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement or in the case of a fixture filing or a filing covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), he shall index the assignment under the name of the assignor as grantor and to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be set pursuant to 30-9-403. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (30-9-402(6)) may be made only by an assignment of the mortgage in the manner provided by 71-1-207.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-405; amd. Sec. 77, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1), in first sentence before "statement" inserted "financing" in two places, deleted former second sentence, which read: "Either the original secured party or the assignee may sign this statement as the secured party.", at beginning of last sentence deleted "If the collateral is equipment or rolling stock of railroads or street railways,", inserted "uniform" before "fee", at end of last sentence substituted "set pursuant to 30-9-403" for "$15", and deleted former last sentence, which read: "In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $2."; in (2) near beginning after "by the filing" inserted "in the place where the original financing statement was filed", after "30-9-409(2)," inserted "containing", near middle of (2) after "index of the financing statement" inserted "or in the case of a fixture filing or a filing covering timber ... under the name of the assignee", after "under the name of the assignee" deleted "If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the", at beginning of next-to-last sentence before "fee for filing" inserted "The uniform" and at end of next-to-last sentence substituted "set pursuant to 30-9-403" for "$15", at end of (2) substituted present last sentence for former last sentence, which read: "In all other cases the uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $2."; and made grammatical changes.

Cross-References

GENERAL

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Formal requisites of financing statement — amendments mortgage as financing statement, 30-9-402.

Termination statement, 30-9-404.

Release of collateral — duties of filing officer — fees, 30-9-406.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Rights, 30-1-201.
Secured party, 30-9-105.
Signed, 30-1-201.
Written, 30-1-201.

30-9-406. Release of collateral — duties of filing officer — fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 30-9-409(2)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be set pursuant to 30-9-403.

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-406; amd. Sec. 78, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Near middle inserted "A statement of release signed ..., including payment of the required fee."; in next-to-last sentence after "such a statement" inserted "of release"; before last sentence deleted "If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways,"; near beginning of last sentence before "fee" inserted "uniform"; at end of last sentence substituted "set pursuant to 30-9-403" for "$15"; and deleted former last sentence, which read: "In all other cases the uniform fee for filing and noting such a statement of release shall be $2."

Cross-References

GENERAL

Termination statement, 30-9-404.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Secured party, 30-9-105.
Signed, 30-1-201.

30-9-407. *(Temporary)* **Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any

presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. The uniform fee for such a certificate shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

30-9-407. *(Effective July 1, 1986)* **Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. The uniform fee for such a certificate shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-407; amd. Sec. 79, Ch. 402, L. 1983; amd. Sec. 3, Ch. 683, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3). Amendment effective July 1, 1986 (sec. 10, Ch. 683, L. 1985).

1983 Amendment: In (2), before "of each secured party" substituted "address" for "addresses"; and at end of next-to-last sentence substituted "set pursuant to 30-9-403" for "$3".

Cross-References

GENERAL

Fees of county clerk, 7-4-2631.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

DEFINITIONAL

Debtor, 30-9-105.
Financing statement, 30-9-402.
Person, 30-1-201.
Secured party, 30-9-105.
Send, 30-1-201.

30-9-408. Repealed. Sec. 85, Ch. 402, L. 1983.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967; R.C.M. 1947, 87A-9-302.1(a).

Cross-References

Section 9-408, U.C.C., 30-9-412.

30-9-409. Utility financing statement — place of filing — contents — perfection of security interest. (1) If filing is required under the

Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1).

History: **En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.2.**

Cross-References

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

30-9-410. Continued applicability of laws to transmitting utilities. Unless displaced by the specific provisions of 30-9-409, this code and other applicable laws remain in full force and effect and supplement the provisions of 30-9-409.

History: **En. Sec. 3, Ch. 76, L. 1965; R.C.M. 1947, 87A-9-302.3; amd. Sec. 1, Ch. 101, L. 1985.**

Compiler's Comments

1985 Amendment: Substituted "30-9-409" for "30-9-408 through 30-9-410" in two places.

30-9-411. Security agreements and termination statements — when destroyed. Termination statements filed under this chapter shall be retained by the filing officer for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by this chapter and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed.

History: **En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963; R.C.M. 1947, 59-516.1.**

Cross-References

Termination statement, 30-9-404.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

30-9-412. Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in 30-9-402. The provisions of this part shall be applied as appropriate to such a financing statement, but its filing may not of itself be a factor in determining whether or not the consignment or lease is intended as security (30-1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor that attaches to the consigned or leased goods is perfected by such filing.

History: **En. Sec. 80, Ch. 402, L. 1983.**

30-9-413 through 30-9-420 reserved.

30-9-421. *(Effective July 1, 1986)* **Rules for agricultural lien filing — duties — perfection and priority rights.** (1) The secretary of state shall adopt rules establishing fees for filing a financing statement pursuant to 30-9-403(8) and for the cost of a printout pursuant to 30-9-407. The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed as provided in 30-9-422.

History: En. Sec. 4, Ch. 683, L. 1985.

30-9-422. Agricultural lien filing implementation schedule — refiling of existing financing statements. (1) A financing or continuation statement covering property described in 30-9-403(8) filed after June 30, 1985, must be filed in the office of the secretary of state.

(2) A financing or continuation statement that covers property described in 30-9-403(8) and is filed and of record with a county clerk and recorder lapses as provided in 30-9-403(10).

(3) The refiling of a financing or continuation statement in the office of the secretary of state that covers property described in 30-9-403(8) is accomplished by:

(a) presenting a certified copy of the statement as filed and of record with the county clerk and recorder, together with certified copies of all related documents, including all continuances, releases, assignments, or amendments;

(b) filing with the county clerk and recorder a notice that the statement and related documents have been filed in the office of the secretary of state; and

(c) tendering the filing fee.

(4) The secretary of state shall by administrative rule establish fees for filing and indexing documents as required by this section. The fees must be commensurate with the costs of processing the documents and establishing the computerized access system described in 39-9-403(9). The secretary of state shall deposit all fees he collects in the state treasury, and the fee money is allocated to the secretary of state to pay the expenses of establishing and operating the computerized access system.

History: En. Sec. 5, Ch. 683, L. 1985.

30-9-423. *(Effective July 1, 1986)* **Filing provisions not to affect department authority as to branded livestock.** Nothing contained in 30-9-403 may be construed to limit the authority of the department of livestock to accept and file notices of security agreements covering branded livestock. All liens on any livestock bearing a recorded brand must be filed with the department of livestock as provided for in 81-8-301.

History: En. Sec. 7, Ch. 683, L. 1985.

Part 5

Default

30-9-501. Default — procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies, and duties provided in 30-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement, and those provided in 30-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (30-9-504(3) and 30-9-505) and with respect to redemption of collateral (30-9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) 30-9-502(2) and 30-9-504(2) insofar as they require accounting for surplus proceeds of collateral;

(b) 30-9-504(3) and 30-9-505(1), which deal with disposition of collateral;

(c) 30-9-505(2), which deals with acceptance of collateral as discharge of obligation;

(d) 30-9-506, which deals with redemption of collateral; and

(e) 30-9-507(1), which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

History: En. Sec. 9-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-501; amd. Sec. 81, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (3), in first parenthetical phrase inserted cite to 30-9-504(3) and deleted reference to (1) of 30-9-505; and made minor grammatical changes.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Purposes — rules of construction — variation by agreement, 30-1-102.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Secured party's right to take possession after default, 30-9-503.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Agreement, 30-1-201.
Collateral, 30-9-105.
Debtor, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-502. Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under 30-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History: En. Sec. 9-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-502; amd. Sec. 82, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (2) before "or chattel paper" deleted "contract rights".

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Use or disposition of collateral without accounting permissible, 30-9-205.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Secured party's liability for failure to comply with this part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Notify, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.

30-9-503. Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under 30-9-504.

History: **En. Sec. 9-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-503.**

Cross-References

GENERAL

Personal property subject to a security interest, 25-13-505.

Duty of secured party, 25-13-506.

DEFINITIONAL

Action, 30-1-201.
Collateral, 30-9-105.
Debtor, 30-9-105.
Equipment, 30-9-109.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.

30-9-504. Secured party's right to dispose of collateral after default — effect of disposition. (1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on sales (chapter 2). The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of

his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History: En. Sec. 9-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-504; amd. Sec. 83, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a) after "sale" inserted "or lease", and after "selling" inserted ", leasing,"; in (2) before "or chattel paper" deleted ", contract rights,"; in (3) after "sent by the secured party to the debtor" substituted "if he has not signed after default . . . written notice of a claim of an" for ", and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security"; and made grammatical changes.

Cross-References

GENERAL

Property subject to a security interest — disposition of proceeds — security agreement, 25-13-712.

Seller's resale including contract for resale, 30-2-706.

Policy and subject matter of chapter, 30-9-102.

Where collateral is not owned by debtor, 30-9-112.

Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation, 30-9-505.

Secured party's liability for failure to comply with this part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Gives notification, 30-1-201.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Proceeds, 30-9-306.
Purchaser, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation. (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods, no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

History: En. Sec. 9-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-505; amd. Sec. 84, Ch. 402, L. 1983.

Compiler's Comments

1983 Amendment: In (2), after first sentence and before last sentence substituted present language for "Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession the secured party must dispose of the collateral under 30-9-504."

Cross-References

GENERAL

Property subject to a security interest — disposition of proceeds — security agreement, 25-13-712.

DEFINITIONAL

Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Knows, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase money security interest, 30-9-107.
Receives notification, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-9-506. Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under 30-9-504 or before the obligation has been discharged under 30-9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

History: En. Sec. 9-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-506.

Cross-References

GENERAL

Redemption of real property, Title 25, ch. 13, part 8.
Redemption, 71-3-116.
Right to redeem, 71-3-117.

DEFINITIONAL

Agreement, 30-1-201.
Collateral, 30-9-105.
Contract, 30-1-201.
Debtor, 30-9-105.
Secured party, 30-9-105.
Writing, 30-1-201.

30-9-507. Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History: En. Sec. 9-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-507.

Cross-References

GENERAL

Duty of secured party, 25-13-506.
Title to collateral immaterial, 30-9-202.
Obligation of good faith, 30-1-203.
Request for statement of account or list of collateral, 30-9-208.
Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Collateral, 30-9-105.
Consumer goods, 30-9-109.
Creditor, 30-1-201.
Debtor, 30-9-105.
Knows, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-508. Foreclosure of security interests in personal property. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure by action of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part.

History: **En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R.C.M. 1921; re-en. Sec. 8286, R.C.M. 1935; amd. Sec. 11-135, Ch. 264, L. 1963; R.C.M. 1947, 52-312; amd. Sec. 1, Ch. 189, L. 1979.**

Cross-References

Personal property subject to a security interest, 25-13-505.

Duty of secured party, 25-13-506.

Default — procedure when security agreement covers both real and personal property, 30-9-501.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Filing of liens, rights, procedure, fees (motor vehicles), 61-3-103.

Foreclosure of real property mortgages, 71-1-222.

30-9-509. Repealed. Sec. 3, Ch. 189, L. 1979.

History: **En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R.C.M. 1921; re-en. Sec. 8287, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963; R.C.M. 1947, 52-313.**

30-9-510. Repealed. Sec. 3, Ch. 189, L. 1979.

History: **En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R.C.M. 1921; re-en. Sec. 8288, R.C.M. 1935; amd. Sec. 11-137, Ch. 264, L. 1963; R.C.M. 1947, 52-314.**

30-9-511. Counsel fees on foreclosure. In an action to foreclose a security interest in personal property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, notwithstanding any stipulation in the instrument or any agreement between the parties to the contrary.

History: **En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).**

Cross-References

Determining compensation of attorneys, 25-10-301.

Inclusion of attorney's fees in bill of costs, 25-10-302.

CHAPTER 10

SECURITIES REGULATION

Part 1 — General Application

Section
30-10-101. Short title.
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Part 2 — Registration

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30-10-306. Criminal liabilities.
30-10-307. Civil liabilities.
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30-10-406. Adverse claims.
30-10-407. Nonliability of corporation and transfer agent.
30-10-408. Nonliability of third persons.
30-10-409. Territorial application.
30-10-410. Tax obligations.
30-10-411. Uniformity of interpretation.

Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Part 1

General Application

30-10-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Securities Act of Montana".

History: En. Sec. 2, Ch. 251, L. 1961; R.C.M. 1947, 15-2002.

30-10-102. Policy. Parts 1 through 3 of this chapter shall be construed to:

(1) protect the investor, persons engaged in securities transactions, and the public interest;

(2) promote uniformity among the states; and

(3) encourage, promote, and facilitate capital investment in Montana.

History: En. Sec. 3, Ch. 251, L. 1961; R.C.M. 1947, 15-2003; amd. Sec. 1, Ch. 322, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "Parts 1 through 3 of this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it".

30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

History: En. Sec. 4, Ch. 251, L. 1961; R.C.M. 1947, 15-2004; amd. Secs. 1, 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 322, L. 1983; amd. Sec. 1, Ch. 478, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: Inserted second sentence of (2) and deleted the same sentence from the end of (2)(c) and made a minor change in phraseology; and in (2)(a) inserted the reference to (12).

30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(14) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection.

History: En. Sec. 13, Ch. 251, L. 1961; R.C.M. 1947, 15-2013; amd. Sec. 2, Ch. 351, L. 1979; amd. Sec. 3, Ch. 322, L. 1983; amd. Sec. 2, Ch. 478, L. 1985.

Compiler's Comments

1985 Amendment: In (3) near end, after "organized", substituted "and supervised under the laws of any state" for "or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state"; in (12) substituted last sentence for "The commissioner may charge a fee of $50 for granting the exemption by order"; and inserted (14).

1983 Amendment: In (12), substituted first sentence for "any security for which registration is not necessary for protection of investors, as determined by the commissioner by order"; and inserted (13).

Cross-References

Authorization to issue securities, 69-14-507.

30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102; or

(16) any transaction pursuant to the Montana Capital Company Act, Title 90, chapter 8, provided that a Montana capital company must first file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit.

History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973; R.C.M. 1947, 15-2014; amd. Sec. 3, Ch. 351, L. 1979; amd. Sec. 4, Ch. 322, L. 1983; amd. Sec. 3, Ch. 478, L. 1985; amd. Sec. 1, Ch. 479, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 478 renumbered former (2)(a) and (2)(b) as (2)(a)(i) and (2)(a)(ii); renumbered former (3) as (2)(b); renumbered former (9)(a) and (9)(b) as (8)(a)(i) and (8)(a)(ii); substituted existing text of introductory clause of (8)(a) for former text that read: "any transaction pursuant to an offer directed by the offeror to not more than 10 persons (other than those designated in subsection (8) of this section) in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if"; and inserted (8)(b).

Chapter 479 inserted (16).

1983 Amendment: In (2) (now (2)(a)) deleted "registered" before "broker-dealer" and after "broker-dealer" inserted "registered pursuant to 30-10-201"; deleted former (2)(a)(i), which read: "a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or"; inserted (2)(a) (now (2)(a)(i)); in (9) (now (8)(a)) changed "offerer" to "offeror" in two places and corrected an internal reference; in (9)(b) (now (8)(a)(ii)) substituted "federal Securities Act of 1933" for "Federal Securities and Exchange Act of 1933"; and inserted (16) (now (15)).

Cross-References

Transfer or pledge within a central depository system, 30-8-320.

Injunctions, 30-10-305.

30-10-106. Proof of exemption. In any proceeding under parts 1 through 3 of this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961; R.C.M. 1947, 15-2025.

30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter shall be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of parts 1 through 3 of this chapter. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of parts 1 through 3 of this chapter authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) No provision of parts 1 through 3 of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders which have ever been entered under parts 1 through 3 of this chapter. The register shall be open for public inspection. The information contained in or filed with any

registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(6) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(1), (3) thru (7); amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 5, Ch. 322, L. 1983.

Compiler's Comments
1983 Amendment: Inserted (7).

Cross-References
Misleading filings, 30-10-302.
Unlawful representation concerning registration or exemption, 30-10-303.
Investigations and subpoenas, 30-10-304.
Injunctions, 30-10-305.

30-10-108 and 30-10-109 reserved.

30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

History: En. Sec. 1, Ch. 285, L. 1985.

30-10-111 through 30-10-114 reserved.

30-10-115. Securities regulatory trust account. (1) There is created in the state special revenue fund an account designated as the "securities regulatory trust account" into which all fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited.

(2) The money received and deposited in the securities regulatory trust account may be paid out of the treasury only on appropriation made by the legislature, as provided in 17-8-101, and may be used only to defray the expenses of the commissioner and his staff in the discharge of their administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The commissioner is responsible for the proper expenditure of this money as provided by law.

(3) Any cash balance remaining in the securities regulatory trust account after all current fiscal year expenditures are met must be transferred to the general fund.

History: En. Sec. 2, Ch. 385, L. 1985.

30-10-116. Securities regulatory trust account investment. (1) It is the responsibility of the commissioner, charged with the administration of the securities regulatory trust account, to make money in the account available for investment as fully as is consistent with the cash requirements of the account and to authorize investment of the account by the board of investments pursuant to Title 17, chapter 6, part 2.

(2) At least monthly, and more often as circumstances require, the commissioner shall notify the board of investments of the amount in the account available for investment, and that amount must be invested by the board of investments pursuant to Title 17, chapter 6, part 2. The notification must include the name and number of the account and the term of the investment if the principal sum is required for meeting obligations.

(3) All earnings derived from investment of the account must be paid into the securities regulatory trust account.

History: En. Sec. 3, Ch. 385, L. 1985.

30-10-117. Securities regulatory trust account deficiency. Whenever there exists in the securities regulatory trust account a deficiency that would render the account insufficient to meet the securities division's funding requirements, the state treasurer may order a transfer of money from another fund in the state treasury to the securities regulatory trust account in order to meet the deficiency without resorting to the necessity of borrowing money and paying interest thereon. The fund from which any money is transferred must be repaid the amount transferred from it not later than the end of the fiscal year in which the transfer is made or the date of repayment specified in the order of the state treasurer.

History: En. Sec. 4, Ch. 385, L. 1985.

30-10-118. Appropriation and use of money — transition period. Nothing in 30-10-115 through 30-10-118 or 30-10-209 prevents continuing the practice of paying any of the direct or indirect expenses incurred by the commissioner or his staff, including but not limited to those involving salaries, retirement, social security contributions and state-paid insurance premiums of state officers and employees, or any other expenses, by appropriations from the general fund. However, the general fund must be reimbursed for any such payments made on or after July 1, 1985. Such reimbursements and any money transferred to the securities regulatory trust account in connection with the initial funding of the securities regulatory trust account must be repaid by transfer from the securities regulatory trust account to the general fund no later than the end of the next fiscal year.

History: En. Sec. 5, Ch. 385, L. 1985.

Part 2

Registration

30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown

by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) When the registration requirements are complied with, the commissioner shall approve the registration.

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, or investment adviser or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(11) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(12) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(13) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, or investment adviser under subsection (10), impose a fine not to exceed $5,000 upon such broker-dealer, salesman, or investment adviser. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, or investment adviser fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, or investment adviser in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, or investment adviser to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977; R.C.M. 1947, 15-2006; amd. Sec. 4, Ch. 137, L. 1979; amd. Sec. 4, Ch. 351, L. 1979; amd. Sec. 1, Ch. 279, L. 1981; amd. Sec. 1, Ch. 407, L. 1985; amd. Sec. 4, Ch. 478, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 407 inserted (13).

Chapter 478 in (4), near beginning after "filing", deleted "with the commissioner" and inserted fourth sentence relating to payment of the waiver fee; and in (8) near beginning after "filing" and near middle after "filed", deleted "with the commissioner", and near middle after "broker-dealer", inserted "who is not a member of NASD, inc."

1981 Amendment: Deleted former subsection (6) relating to effective dates of registration and added current (6); substituted "December 31" for "March 1" near the beginning of (7); added "or such other time as the commissioner may by rule adopt" in the first sentence of (7); inserted "or investment adviser" following "a broker-dealer, salesman" in (10)(f); deleted "The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section." at the end of (10)(j).

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Administration, 30-10-107.

Prohibited practices, 30-10-301.

Unlawful representation concerning registration or exemption, 30-10-303.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Effect of conviction on civil rights, 46-18-801.

30-10-202. Registration of securities. It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter.

History: En. Sec. 7, Ch. 251, L. 1961; R.C.M. 1947, 15-2007; amd. Sec. 2, Ch. 279, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "offer or sell" for "offer to sell" near the beginning of the section.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

Civil liabilities, 30-10-307.

30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208; and

(l) such other information as the commissioner may require.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at noon the 10th business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: En. Sec. 8, Ch. 251, L. 1961; R.C.M. 1947, 15-2008; amd. Sec. 3, Ch. 279, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2)(l); substituted "noon the 10th business day" for "3 p.m. mountain standard time the second full business day" in (3).

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall

promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: **En. Sec. 9, Ch. 251, L. 1961; R.C.M. 1947, 15-2009; amd. Sec. 4, Ch. 279, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (1)(i); added "business" between "at least 10" and "days" in (2)(b); deleted "full" before "business days" in (2)(c).

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) such other information as the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: **En. Sec. 10, Ch. 251, L. 1961; R.C.M. 1947, 15-2010; amd. Sec. 5, Ch. 279, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (1)(p).

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of

the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

History: En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977; R.C.M. 1947, 15-2011; amd. Sec. 6, Ch. 279, L. 1981; amd. Sec. 5, Ch. 478, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (5) that read: "During the period in which there is an offering of securities registered under the provisions of parts 1 through 3 of this chapter, and for which there is no exemption under 30-10-104 or 30-10-105, financial data for the issuer's fiscal year and such other statements as the commissioner may require shall be filed with the commissioner annually, not less than 90 days after the end of each such year. If such statements are not certified, the commissioner may verify them by examining the issuer's books and records."

1981 Amendment: Substituted "for a period of 1 year unless it is revoked" for "until revoked" near the beginning of (3); deleted "or until" before "terminated upon request" in (3); added "or renewed under 30-10-209(1)(b)" after "with the consent of the commissioner" in (3); substituted "in which there is an offering" for "of public offering in the initial distribution" near the beginning of (5); substituted "and for which there is no exemption under 30-10-104 or 30-10-105, financial data for the issuer's fiscal year and such other statements as the commissioner may require shall be filed" for "by notification or qualification, financial data or statements corresponding to those required under the provisions of 30-10-203(2) and 30-10-205 and to the insurer's fiscal year shall be filed" in (5).

Cross-References

Administration, 30-10-107.

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-207. Denial, suspension, and revocation of registration of securities. (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated, in connection with the offering by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (c) more than 1 year from the date of the injunction relied on; and

(ii) he may not enter an order under this subsection (c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and he shall vacate any such order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subsection (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961; R.C.M. 1947, 15-2012.

Cross-References

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-208. Consent to service of process — manner of service. (1) Every applicant for registration as a broker-dealer or investment adviser or salesman under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963; R.C.M. 1947, 15-2015.

Cross-References

Service of process — alternative methods, Title 25, ch. 3, part 5.

Long arm statutes, 25-3-601, 35-1-807, 35-18-107.

30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be $50.

(5) For waiver of the residency requirement of 30-10-201(4), the fee shall be $50 for each original registration.

(6) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(7) All fees, examination charges, and miscellaneous charges, except fines or penalties, collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the securities regulatory trust account, pursuant to 30-10-115 through 30-10-118.

(8) All fines and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the general fund.

History: En. Sec. 16, Ch. 251, L. 1961; amd. Sec. 1, Ch. 242, L. 1977; R.C.M. 1947, 15-2016; amd. Sec. 1, Ch. 281, L. 1981; amd. Sec. 6, Ch. 322, L. 1983; amd. Sec. 1, Ch. 385, L. 1985; amd. Sec. 6, Ch. 478, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 385 inserted (7) and (8).

Chapter 478 substituted present language of (1)(c) for "A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee of $50. The late renewal fee may be waived by the commissioner upon a showing of good cause"; deleted former (1)(d) and (1)(e) that read: "(d) For filing an annual statement, a posteffective amendment to a registration of securities, or a name change, the fee shall be $10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee"; deleted former (2)(c) and (2)(d) that read: "(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be $10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action"; in (4) substituted "30-10-105(15)" for "30-10-105(16)" and near end, after "exemption", inserted "or an exception to the provisions of parts 1 through 3 of this chapter"; and inserted (5) and (6).

1983 Amendment: At end of (2)(b) inserted "and $50 for each transfer"; in (4) after "an exemption" inserted "under 30-10-105(16), the fee shall be established by the commissioner by rule, for a request for any other exemption".

1981 Amendment: Redesignated all subsections; increased the registration fee from $100 to $200 in (1)(a) and (1)(b); increased the percentages from 1/20 to 1/10 of 1% in (1)(a) and (1)(b); substituted "a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee" for "a registration remains in effect for securities with respect to which reports are required to be filed under 30-10-206(4), an additional registration fee shall be paid to the commissioner" in (1)(b); deleted "When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee." from the end of (1)(b), (2)(a), and (2)(b); added subsections (1)(c), (1)(e), (2)(c), and (2)(d); inserted "a post-effective amendment to a registration of securities, or a name change" in (1)(d); increased the fees in (2)(b) and (4) from $25 to $50; deleted "or exception to the provisions of this chapter" after "exemption" in (4).

Cross-References

Administration, 30-10-107.

30-10-210. Examination costs. (1) Any issuer or broker-dealer who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(2); amd. Sec. 5, Ch. 351, L. 1979; amd. Sec. 7, Ch. 279, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "investigated or" after "broker-dealer who is" at the beginning of (1); deleted "all at reasonable rates customary therefor and as established and adopted by the commissioner upon July 1, 1961, and annually thereafter" before "upon presentation of a detailed account" in (1); added "however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration" near the end of (1).

Cross-References

Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

Investigations and subpoenas, 30-10-304.

Part 3

Offenses and Penalties

30-10-301. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to:

(a) employ any device, scheme, or artifice to defraud the other person; or

(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

History: En. Sec. 5, Ch. 251, L. 1961; R.C.M. 1947, 15-2005; amd. Sec. 1, Ch. 280, L. 1981.

Compiler's Comments
1981 Amendment: Added "in, into, or from this state" to the introductory clause of (1).

Cross-References
Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

30-10-302. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: En. Sec. 17, Ch. 251, L. 1961; R.C.M. 1947, 15-2017.

Cross-References
Administration, 30-10-107.
Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.

30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201(4) or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 18, Ch. 251, L. 1961; R.C.M. 1947, 15-2018; amd. Sec. 6, Ch. 351, L. 1979.

30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019; amd. Sec. 1, Ch. 577, L. 1983.

Compiler's Comments

1983 Amendment: In (4), in first sentence after "but no" substituted "compelled testimony" through end of subsection for "individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Cross-References

Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.
Perjury, 45-7-201.

30-10-305. Injunctions and other remedies. (1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

History: **En. Sec. 20, Ch. 251, L. 1961; R.C.M. 1947, 15-2020; amd. Sec. 7, Ch. 351, L. 1979; amd. Sec. 2, Ch. 407, L. 1985; amd. Sec. 7, Ch. 478, L. 1985.**

Compiler's Comments

1985 Amendments: Chapter 407 inserted (3).

Chapter 478 in (1)(a) in second sentence, after "10 days after", substituted "the hearing on the allegations contained in the cease and desist order" for "any hearing".

Cross-References

Administration, 30-10-107.

30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 10 years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation; however, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2) The commissioner may refer such evidence as may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) Nothing in parts 1 through 3 of this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961; R.C.M. 1947, 15-2021; amd. Sec. 1, Ch. 394, L. 1981.

Compiler's Comments

1981 Amendment: Increased imprisonment from 3 to 10 years in first sentence of subsection (1); increased time limitation from 5 to 8 years in second sentence of subsection (1); and added clause providing for extension of time period at the end of subsection (1).

Cross-References

Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

Denial, suspension, and revocation of registration of securities, 30-10-207.

30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest.

History: En. Sec. 22, Ch. 251, L. 1961; amd. Sec. 1, Ch. 213, L. 1967; R.C.M. 1947, 15-2022; amd. Sec. 2, Ch. 280, L. 1981.

Compiler's Comments

1981 Amendment: Increased the interest rate from 6% to 10% near the middle of (1) and in (1)(b), (3)(a), and (3)(b)(ii).

Cross-References

Registration by notification, 30-10-203.

Registration by coordination, 30-10-204.

30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: En. Sec. 23, Ch. 251, L. 1961; R.C.M. 1947, 15-2023.

Cross-References

Administration, 30-10-107.

Part 4

Fiduciary Security Transfers

30-10-401. Short title. This part may be cited as the "Uniform Act for the Simplification of Fiduciary Security Transfers".

History: En. Sec. 11, Ch. 101, L. 1963; R.C.M. 1947, 15-662.

30-10-402. Definitions. In this part, unless the context otherwise requires, the following definitions apply:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association, or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History: En. Sec. 1, Ch. 101, L. 1963; R.C.M. 1947, 15-652.

30-10-403. Registration in the name of fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History: En. Sec. 2, Ch. 101, L. 1963; R.C.M. 1947, 15-653.

Cross-References

General provisions regarding registration of securities, 30-10-206.

30-10-404. Assignment by fiduciary. Except as otherwise provided in this part, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

History: **En. Sec. 3, Ch. 101, L. 1963; R.C.M. 1947, 15-654.**

30-10-405. Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (2) except to the extent that the contents relate directly to the appointment or incumbency.

History: **En. Sec. 4, Ch. 101, L. 1963; R.C.M. 1947, 15-655.**

30-10-406. Adverse claims. (1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this part relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

History: **En. Sec. 5, Ch. 101, L. 1963; R.C.M. 1947, 15-656.**

30-10-407. Nonliability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this part.

History: **En. Sec. 6, Ch. 101, L. 1963; R.C.M. 1947, 15-657.**

30-10-408. Nonliability of third persons. (1) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this part incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

History: En. Sec. 7, Ch. 101, L. 1963; R.C.M. 1947, 15-658.

30-10-409. Territorial application. (1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(2) This part applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History: En. Sec. 8, Ch. 101, L. 1963; R.C.M. 1947, 15-659.

Cross-References

Applicability (investment securities), 30-8-106.

30-10-410. Tax obligations. This part does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

History: En. Sec. 9, Ch. 101, L. 1963; R.C.M. 1947, 15-660.

Cross-References

Estate tax, Title 72, ch. 16, part 9.

30-10-411. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 101, L. 1963; R.C.M. 1947, 15-661.

CHAPTER 11

SALES

Part 1 — Sales and Exchanges

Section

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Part 1

Sales and Exchanges

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Execution sale, 25-13-701.

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Retail Installment Sales Act, Title 31, ch. 1, part 2.

Sale after mortgage foreclosure, 71-1-222.

Itinerant merchants, 80-3-701.

Sale of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk, 81-23-102.

Regulation of sale of coal, 82-3-201.

30-11-101. Sale defined. Sale is a contract by which, for a pecuniary consideration called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R.C.M. 1921; Cal. Civ. C. Sec. 1721; Field Civ. C. Sec. 855; re-en. Sec. 7581, R.C.M. 1935; R.C.M. 1947, 74-101.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Application to exchanges, 30-11-113.

Auction sales, Title 30, ch. 11, part 5.

30-11-102. Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R.C.M. 1921; Cal. Civ. C. Sec. 1722; Field Civ. C. Sec. 856; re-en. Sec. 7582, R.C.M. 1935; R.C.M. 1947, 74-102.

30-11-103. Agreement for sale. An agreement for sale is either:

(1) an agreement to sell;
(2) an agreement to buy; or
(3) a mutual agreement to sell and buy.

History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R.C.M. 1921; Cal. Civ. C. Sec. 1726; Field Civ. C. Sec. 857; re-en. Sec. 7583, R.C.M. 1935; R.C.M. 1947, 74-103.

Cross-References

Contracts, Title 28, ch. 2.

30-11-104. Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R.C.M. 1921; Cal. Civ. C. Sec. 1727; Field Civ. C. Sec. 858; re-en. Sec. 7584, R.C.M. 1935; R.C.M. 1947, 74-104.

30-11-105. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R.C.M. 1921; Cal. Civ. C. Sec. 1728; Field Civ. C. Sec. 859; re-en. Sec. 7585, R.C.M. 1935; R.C.M. 1947, 74-105.

30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R.C.M. 1921; Cal. Civ. C. Sec. 1729; Field Civ. C. Sec. 860; re-en. Sec. 7586, R.C.M. 1935; R.C.M. 1947, 74-106.

30-11-107. What may be the subject of the contract. Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R.C.M. 1921; Cal. Civ. C. Sec. 1730; Field Civ. C. Sec. 861; re-en. Sec. 7587, R.C.M. 1935; R.C.M. 1947, 74-107.

30-11-108. Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R.C.M. 1921; Cal. Civ. C. Sec. 1731; Based on Field Civ. C. Sec. 862; re-en. Sec. 7588, R.C.M. 1935; R.C.M. 1947, 74-108.

Cross-References

Lien of seller of real property, 71-3-1301 through 71-3-1303.

Transfer of real property, Title 70, ch. 20.

30-11-109. Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances".

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R.C.M. 1921; Cal. Civ. C. Sec. 1733; Field Civ. C. Sec. 863; re-en. Sec. 7589, R.C.M. 1935; R.C.M. 1947, 74-109.

Cross-References

What included in authority to sell real property, 28-10-422.

Covenants running with the land, Title 70, ch. 17, part 2.

Implied covenants, 70-20-304.

30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R.C.M. 1921; Cal. Civ. C. Sec. 1734; Field Civ. C. Sec. 864; re-en. Sec. 7590, R.C.M. 1935; R.C.M. 1947, 74-110.

Cross-References

Damages for breach of covenant, 27-1-316.

What included in authority to sell real property, 28-10-422.

Covenants running with the land, Title 70, ch. 17, part 2.

Covenants implied from words of grant, 70-20-304.

30-11-111. Contract for sale of real property. No agreement for the sale of real property or of any interest therein is valid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R.C.M. 1921; Cal. Civ. C. Sec. 1741; Based on Field Civ. C. Sec. 867; re-en. Sec. 7593, R.C.M. 1935; R.C.M. 1947, 74-203.

Cross-References

What contracts must be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

30-11-112. Exchange defined. Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R.C.M. 1921; Cal. Civ. C. Sec. 1804; Field Civ. C. Sec. 903; re-en. Sec. 7632, R.C.M. 1935; R.C.M. 1947, 74-501.

Cross-References

Price payable in money, goods, realty, or otherwise, 30-2-304.

30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R.C.M. 1921; Cal. Civ. C. Sec. 1806; Field Civ. C. Sec. 905; re-en. Sec. 7634, R.C.M. 1935; R.C.M. 1947, 74-503.

30-11-114. Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. 7635, R.C.M. 1921; Cal. Civ. C. Sec. 1807; Field Civ. C. Sec. 906; re-en. Sec. 7635, R.C.M. 1935; R.C.M. 1947, 74-504.

Cross-References

Money, 30-3-107.

30-11-115. Uniform Commercial Code overrides. The provisions of this part do not apply to exchanges subject to the Uniform Commercial Code.

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963; R.C.M. 1947, 74-505; amd. Sec. 5, Ch. 137, L. 1979.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Part 2

Seller's Responsibilities

30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R.C.M. 1921; Cal. Civ. C. Sec. 1748; Field Civ. C. Sec. 869; re-en. Sec. 7598; R.C.M. 1935; R.C.M. 1947, 74-301.

Cross-References

Attachment of property covered by security interest, 27-18-413.

Uniform Commercial Code — sales, Title 30, ch. 2.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Recovery of livestock, 81-8-312.

30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the law on liens.

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R.C.M. 1921; Cal. Civ. C. Sec. 1749; Field Civ. C. Sec. 870; re-en. Sec. 7599, R.C.M. 1935; R.C.M. 1947, 74-302.

Cross-References
Seller's remedies in general, 30-2-703.
Seller's resale including contract for resale, 30-2-706.

30-11-203. Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R.C.M. 1921; Cal. Civ. C. Sec. 1753; Field Civ. C. Sec. 871; re-en. Sec. 7600, R.C.M. 1935; R.C.M. 1947, 74-303.

Cross-References
Manner of seller's tender of delivery, 30-2-503.
Effect of seller's tender — delivery on condition, 30-2-507.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-204. Delivery — where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R.C.M. 1921; Cal. Civ. C. Sec. 1754; Field Civ. C. Sec. 872; re-en. Sec. 7601, R.C.M. 1935; R.C.M. 1947, 74-304.

Cross-References
Absence of specified place for delivery, 30-2-308.
Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-205. Expense of transportation. One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R.C.M. 1921; Cal. Civ. C. Sec. 1755; Field Civ. C. Sec. 873; re-en. Sec. 7602, R.C.M. 1935; R.C.M. 1947, 74-305.

Cross-References
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.

30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R.C.M. 1921; Cal. Civ. C. Sec. 1756; Field Civ. C. Sec. 874; re-en. Sec. 7603, R.C.M. 1935; R.C.M. 1947, 74-306.

Cross-References
Absence of specified place for delivery, 30-2-308.
Manner of seller's tender of delivery, 30-2-503.
Effect of seller's tender — delivery on condition, 30-2-507.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending or it will be at his own risk during its transportation. If he follows such directions or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R.C.M. 1921; Cal. Civ. C. Sec. 1757; Field Civ. C. Sec. 875; re-en. Sec. 7604, R.C.M. 1935; R.C.M. 1947, 74-307.

Cross-References
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.

30-11-208. Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R.C.M. 1921; Cal. Civ. C. Sec. 1758; Field Civ. C. Sec. 876; re-en. Sec. 7605, R.C.M. 1935; R.C.M. 1947, 74-308.

Cross-References
Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-209. Warranty defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R.C.M. 1921; Cal. Civ. C. Sec. 1763; Field Civ. C. Sec. 877; re-en. Sec. 7606, R.C.M. 1935; R.C.M. 1947, 74-309.

Cross-References
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-11-210. No implied warranty in mere contract of sale. Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.

Cross-References
Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.
Third-party beneficiaries of warranties express or implied, 30-2-318.

30-11-211. Warranty of title to personal property. One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unencumbered title thereto.

History: En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R.C.M. 1921; Cal. Civ. C. Sec. 1765; Field Civ. C. Sec. 879; re-en. Sec. 7608, R.C.M. 1935; R.C.M. 1947, 74-311.

Cross-References
Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

30-11-212. Warranty on sale by sample. One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.

History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R.C.M. 1921; Cal. Civ. C. Sec. 1766; Field Civ. C. Sec. 880; re-en. Sec. 7609, R.C.M. 1935; R.C.M. 1947, 74-312.

Cross-References
Express warranties by affirmation, promise, description, sample, 30-2-313.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-213. Warranty when seller knows that buyer relies on his statements. One who sells or agrees to sell personal property knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R.C.M. 1921; Cal. Civ. C. Sec. 1767; Field Civ. C. Sec. 881; re-en. Sec. 7610, R.C.M. 1935; R.C.M. 1947, 74-313.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

30-11-214. Warranty when merchandise not in existence. One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care.

History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R.C.M. 1921; Cal. Civ. C. Sec. 1768; Field Civ. C. Sec. 882; re-en. Sec. 7611, R.C.M. 1935; R.C.M. 1947, 74-314.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-215. Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R.C.M. 1921; Cal. Civ. C. Sec. 1769; Field Civ. C. Sec. 883; re-en. Sec. 7612, R.C.M. 1935; R.C.M. 1947, 74-315.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-216. Warranty of fitness for particular purpose. One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R.C.M. 1921; Cal. Civ. C. Sec. 1770; Field Civ. C. Sec. 884; re-en. Sec. 7613, R.C.M. 1935; R.C.M. 1947, 74-316.

Cross-References

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-217. Warranty when thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R.C.M. 1921; Cal. Civ. C. Sec. 1771; Field Civ. C. Sec. 885; re-en. Sec. 7614, R.C.M. 1935; R.C.M. 1947, 74-317.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-218. Warranty that trademark is genuine. One who sells or agrees to sell any article to which there is affixed or attached a trademark thereby warrants that trademark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R.C.M. 1921; Cal. Civ. C. Sec. 1772; Field Civ. C. Sec. 886; re-en. Sec. 7615, R.C.M. 1935; R.C.M. 1947, 74-318.

30-11-219. Warranty of truth of other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured, or prepared thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R.C.M. 1921; Cal. Civ. C. Sec. 1773; Field Civ. C. Sec. 887; re-en. Sec. 7616, R.C.M. 1935; R.C.M. 1947, 74-319.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

30-11-220. Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R.C.M. 1921; Cal. Civ. C. Sec. 1774; Field Civ. C. Sec. 888; re-en. Sec. 7617, R.C.M. 1935; R.C.M. 1947, 74-320.

30-11-221. Warranty on sale of goodwill. One who sells the goodwill of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R.C.M. 1921; Cal. Civ. C. Sec. 1776; Field Civ. C. Sec. 890; re-en. Sec. 7619, R.C.M. 1935; R.C.M. 1947, 74-322.

Cross-References

Goodwill of business, 30-13-121.

Goodwill transferable, 30-13-122.

30-11-222. Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R.C.M. 1921; Cal. Civ. C. Sec. 1777; Field Civ. C. Sec. 891; re-en. Sec. 7620, R.C.M. 1935; R.C.M. 1947, 74-323.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects.

History: **En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R.C.M. 1921; Cal. Civ. C. Sec. 1778; Field Civ. C. Sec. 892; re-en. Sec. 7621, R.C.M. 1935; R.C.M. 1947, 74-324.**

Cross-References

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-224. Uniform Commercial Code overrides. This part shall not apply to sales subject to the Uniform Commercial Code.

History: **En. 74-325 by Sec. 11-150, Ch. 264, L. 1963; R.C.M. 1947, 74-325.**

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Part 3

Merchant's Rights

30-11-301. Definitions. (1) The term "merchant" as used in this part shall mean an owner or operator and the agent, consignee, employee, lessee, or officer of an owner or operator of any merchant's premises.

(2) The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held, or offered for sale.

(3) The term "merchandise" shall mean any personal property capable of manual delivery displayed, held, or offered for sale by a merchant.

History: **En. Sec. 1, Ch. 11, L. 1957; R.C.M. 1947, 64-212.**

30-11-302. Obligation to keep merchandise in full view. Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

History: **En. Sec. 2, Ch. 11, L. 1957; R.C.M. 1947, 64-213.**

Cross-References

Theft, 45-6-301.

Restrictions on arrest by merchant — liability, 46-6-503.

Concealment not proof of theft, 46-6-504.

Part 4

Commission Merchants

Part Cross-References

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

30-11-401. Commission merchants to acknowledge receipt of property. Any persons doing business in this state as commission merchants or who shall receive from any person of this state agricultural or horticultural products or farm produce raised in this state to sell on commission shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: **En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R.C.M. 1921; re-en. Sec. 4183, R.C.M. 1935; R.C.M. 1947, 66-701.**

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-402. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in the preceding section shall sell the same or 25% thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold, and the price received therefor.

History: **En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R.C.M. 1921; re-en. Sec. 4184, R.C.M. 1935; R.C.M. 1947, 66-702.**

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-403. Penalties for violation. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of 30-11-401 and 30-11-402 or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: **En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R.C.M. 1921; re-en. Sec. 4185, R.C.M. 1935; R.C.M. 1947, 66-703.**

Part 5

Auction Sales and Auctioneers

Part Cross-References

Auction sales — "auctioneer", 30-6-108.

30-11-501. Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: **En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R.C.M. 1921; Cal. Civ. C. Sec. 1792; Field Civ. C. Sec. 896; re-en. Sec. 7625, R.C.M. 1935; Sec. 66-213, R.C.M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977; R.C.M. 1947, 74-701.**

30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot,

that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R.C.M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977; R.C.M. 1947, 74-702.

Cross-References

Highway equipment by bid, 18-6-103.

Firm offers, 30-2-205.

Enforcement of lien — sale (agisters' lien), 71-3-1203.

Enforcement of lien (hotel lien), 71-3-1402.

Sale of confiscated birds and animals, 87-1-511.

30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for his own protection.

History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R.C.M. 1921; Cal. Civ. C. Sec. 1795; Field Civ. C. Sec. 899; re-en. Sec. 7628, R.C.M. 1935; Sec. 66-216, R.C.M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977; R.C.M. 1947, 74-703.

Cross-References

What contracts must be in writing, 28-2-903.

30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by themselves.

History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R.C.M. 1921; Cal. Civ. C. Sec. 1798; Field Civ. C. Sec. 902; re-en. Sec 7631, R.C.M. 1935; Sec. 66-219, R.C.M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977; R.C.M. 1947, 74-704.

Cross-References

What contracts must be in writing, 28-2-903.

Certificate of sale, 87-1-512.

30-11-505. Book of sales. (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R.C.M. 1921; Cal. Pol. C. Sec. 3306; re-en. Sec. 4155, R.C.M. 1935; Sec. 66-211, R.C.M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977; R.C.M. 1947, 74-705.

Cross-References

Certificate of sale, 87-1-512.

30-11-506. Auctioneer's authority from the seller. An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

(1) to sell by public auction to the highest bidder;

(2) to sell for cash only, except for articles usually sold on credit at auction;

(3) to warrant as an agent pursuant to 28-10-421;

(4) to prescribe reasonable rules and terms of sale;

(5) to deliver the thing sold upon payment of the price;

(6) to collect the price; and

(7) to do whatever else is necessary, proper, and usual in the ordinary course of business for effecting these purposes.

History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R.C.M. 1921; Cal. Civ. C. Sec. 2362; Field Civ. C. Sec. 1264; re-en. Sec. 7976, R.C.M. 1935; Sec. 66-201, R.C.M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977; R.C.M. 1947, 74-706.

30-11-507. Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 30-11-504.

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R.C.M. 1921; Cal. Civ. C. Sec. 2363; Field Civ. C. Sec. 1265; re-en. Sec. 7977, R.C.M. 1935; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R.C.M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977; R.C.M. 1947, 74-707.

30-11-508. Auctioneer — authority and bond. Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R.C.M. 1921; Cal. Pol. C. Sec. 3284; re-en. Sec. 4147, R.C.M. 1935; Sec. 66-203, R.C.M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977; R.C.M. 1947, 74-708.

30-11-509. Reciprocal privileges to nonresident auctioneers. The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R.C.M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977; R.C.M. 1947, 74-709.

30-11-510. Bond and sureties — approval — filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in his office.

(2) If the auctioneer is not a resident, the bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R.C.M. 1921; Cal. Pol. C. Sec. 3285; re-en. Sec. 4148, R.C.M. 1935; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R.C.M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977; R.C.M. 1947, 74-710.

30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable thereof is ex officio auctioneer and is permitted to sell any property at public auction.

(2) He is liable on his official bond for any delinquency as the ex officio auctioneer.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R.C.M. 1921; Cal. Pol. C. Sec. 3291; re-en. Sec. 4149, R.C.M. 1935; amd. Sec. 7, Ch. 253, L. 1975; Sec. 66-205, R.C.M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977; R.C.M. 1947, 74-711.

30-11-512. Assistant — who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ an agent or employee to hold the auction in his name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R.C.M. 1921; Cal. Pol. C. Sec. 3292; re-en. Sec. 4150, R.C.M. 1935; Sec. 66-206, R.C.M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977; R.C.M. 1947, 74-712.

30-11-513. Auctioneers to designate one place of business — partners. (1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.

(2) He shall designate in the same document his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R.C.M. 1921; Cal. Pol. C. Sec. 3302; re-en. Sec. 4151, R.C.M. 1935; Sec. 66-207, R.C.M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977; R.C.M. 1947, 74-713.

30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

History: En. 74-714 by Sec. 14, Ch. 263, L. 1977; R.C.M. 1947, 74-714.

30-11-515. Enforcement. The provisions of this part shall be enforced by the department of commerce and the county attorney of the county in which the violation occurred.

History: En. 74-715 by Sec. 15, Ch. 263, L. 1977; R.C.M. 1947, 74-715; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

30-11-516. Powers of cities and towns. Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

History: En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R.C.M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977; R.C.M. 1947, 74-716.

Cross-References

Licensing discrimination by governmental agency prohibited, 49-3-204.

Part 6

Factors

Part Cross-References
Agency, Title 28, ch. 10.

30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchaser.

History: En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en Sec. 7805, R.C.M. 1921; Cal. Civ. C. Sec. 2026; Based on Field Civ. C. Sec. 1045; re-en. 7805, R.C.M. 1935; R.C.M. 1947, 2-401.

Cross-References
Termination at will, 39-2-503.

30-11-602. Obedience required from factor. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

History: En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en Sec. 7806, R.C.M. 1921; Cal. Civ. C. Sec. 2027; Based on Field Civ. C. Sec. 1046; re-en. 7806, R.C.M. 1935; R.C.M. 1947, 2-402.

Cross-References
Agent not to exceed actual authority, 28-10-301.
Employee must obey employer, 39-2-404.

30-11-603. Sales on credit. A factor may sell property consigned to him on such credit as is usual but, having once agreed with the purchaser upon the terms of credit, may not extend it.

History: En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en Sec. 7807, R.C.M. 1921; Cal. Civ. C. Sec. 2028; Based on Field Civ. C. Sec. 1047; re-en. 7807, R.C.M. 1935; R.C.M. 1947, 2-403.

Cross-References
What included in authority to sell personal property, 28-10-421.
What included in authority to sell real property, 28-10-422.
Authority of agent to sell to receive price, 28-10-423.

30-11-604. Liability of factor under guaranty commission. A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it were a debt of his own and not as a mere guarantor for the purchaser. He does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en Sec. 7808, R.C.M. 1921; Cal. Civ. C. Sec. 2029; Based on Field Civ. C. Sec. 1048; re-en. 7808, R.C.M. 1935; R.C.M. 1947, 2-404.

Cross-References
When agent responsible to third persons as a principal, 28-10-702.
Guaranty defined, 28-11-101.
Knowledge or consent of principal not required, 28-11-102.

30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

History: **En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, R.C.M. 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. 1935; R.C.M. 1947, 2-405.**

30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted, to:

(1) insure property consigned to him uninsured;

(2) sell on credit anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the same; and

(3) delegate his authority to his partner or servant but not to any person in an independent employment.

History: **En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, R.C.M. 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; R.C.M. 1947, 2-406.**

Cross-References

Agent not to exceed actual authority, 28-10-301.

Authority of agent, Title 30, ch. 10, part 4.

30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership.

History: **En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, R.C.M. 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; R.C.M. 1947, 2-407.**

Cross-References

Actual versus ostensible agency, 28-10-103.

What authority agent has, 28-10-401.

Ostensible authority defined, 28-10-403.

Part 7

Canceled Dealership Contracts Repurchase Requirements

30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a

dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of (1)(a) inserted "with respect to a dealership contract"; inserted (1)(b), (2), and (3); at beginning of (5)(a) inserted "with respect to a dealership contract"; and inserted (5)(b) and (7).

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the dealer at the time of cancellation.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made upon return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

History: **En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of (1) after "dealership contract", deleted "evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement"; inserted (2); and in first sentence of (3) substituted "retailer's or wholesaler's account" for "retailer's account" and substituted "subsection (1) or (2)" for "subsection (1)".

Cross-References

"Security agreement" defined, 30-9-105.

30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resaleable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

History: **En. Sec. 3, Ch. 338, L. 1983.**

30-11-704. Repurchase of inventory of deceased retailer or wholesaler. If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702.

History: **En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of sentence substituted "retailer, wholesaler, or majority stockholder" for "retailer or majority stockholder" and after "operating as a retailer" inserted "or wholesaler".

Cross-References

"Heirs" and "Devisees" defined, 72-1-103.

30-11-705 through 30-11-710 reserved.

30-11-711. Rights not affected. (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

History: En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near middle of subsection, substituted "retailer's or wholesaler's account" for "retailer's account" and near end of subsection, substituted "retailer's or wholesaler's purchase" for "retailer's purchase"; and at end of (2) after "retailer", inserted "or wholesaler".

Cross-References

"Security interest" defined, 30-1-201.

30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs.

History: En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985.

Compiler's Comments

1985 Amendment: After "freight charges paid by the retailer", inserted "or wholesaler" and substituted "retailer's or wholesaler's attorney fees" for "retailer's attorney fees".

30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either his contract remedies or the remedy provided in 30-11-702. An election to pursue his contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 as to any inventory not covered by contract.

History: En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(b); and in (2) in first sentence, substituted "retailer or wholesaler may elect" for "retailer may elect" and in second sentence, substituted "retailer's or wholesaler's right" for "retailer's right".

Cross-References

Breach of contract — damages, 27-1-311.

Part 8

Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(5) "Good cause" means:

(a) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(b) bad faith by the dealer in carrying out the terms of the dealership.

(6) "Grantor" means a person who grants a dealership.

(7) "Person" means any individual, partnership, association, corporation, or other entity.

History: En. Sec. 1, Ch. 45, L. 1985.

30-11-802. Cancellation and alteration of dealerships. No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 45, L. 1985.

30-11-803. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 45, L. 1985.

30-11-804 through 30-11-810 reserved.

30-11-811. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 4, Ch. 45, L. 1985.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

Specific and preventive relief, Title 27, ch. 1, part 4.

Injunctions, Title 27, ch. 19.

CHAPTER 12

WEIGHTS, MEASURES, STANDARDS, AND LABELING

Part 1 — General Provisions

Section

30-12-101. Definitions.
30-12-102. Systems of weights and measures.
30-12-103. State standards of weight and measure.
30-12-104. Field standards and equipment.
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30-12-106. Fractional parts — construction of contracts.

Part 2 — Authority of Department of Commerce

30-12-201. General powers and duties of department.
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Part 3 — Method of Sale of Commodities

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30-12-501. Renumbered 30-12-106 by Code Commissioner, 1981.
30-12-502. Hindering or obstructing officer — penalties.
30-12-503. Impersonation of officer — penalties.
30-12-504. Offenses and penalties.
30-12-505. Injunction.
30-12-506. Presumptive evidence.
30-12-507. Validity of prosecutions.

Part 6 — Money of Account

30-12-601. Money of account.
30-12-602. Limitation.

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Part 10 — Paints—Labeling

30-12-1001. Paints — label — contents of label.
30-12-1002. Enforcement of part.
30-12-1003. Designation of laboratory for analysis.
30-12-1004. County attorney duties.
30-12-1005. Possession as evidence.
30-12-1006. Penalty for violations.

Part 1

General Provisions

30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(3) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the

performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(4) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(7) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(8) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(9) "Sell" and "sale" include but are not limited to barter and exchange.

(10) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(11) "Weight", when used in connection with any commodity, means net weight.

(12) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of parts 1 through 5 apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975; R.C.M. 1947, 90-153; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (5).

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-102. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969; R.C.M. 1947, 90-154.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-103. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards shall, when they have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the department. They shall not be removed from there except for repairs or for certification, and they shall be submitted at least once in 10 years to the national bureau of standards for certification.

History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975; R.C.M. 1947, 90-156.

Cross-References

General powers and duties of Department, 30-12-201.

30-12-104. Field standards and equipment. In addition to the state standards provided for in 30-12-103, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of parts 1 through 5 of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969; R.C.M. 1947, 90-157.

30-12-105. Use of metric sizes in sale of commodities — department to make rules. Notwithstanding any other provision, metric sizes as defined by the department of commerce by rule will be permitted, provided there is compliance with all labeling requirements of the state of Montana.

History: En. Sec. 1, Ch. 75, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 133, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 575 inserted "of business regulation" after "department". Chapter 274 substituted "department of commerce" for "department of business regulation".

30-12-106. Fractional parts — construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 30-12-101 and 30-12-102, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969; R.C.M. 1947, 90-185; MCA 1979, 30-12-501; redes. 30-12-106 by Code Commissioner, 1981.

Cross-References

Sale by net weight, 30-12-306.

Part 2

Authority of Department of Commerce

Part Cross-References

Offenses and penalties, 30-12-504.

30-12-201. General powers and duties of department. The department shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures offered for sale, sold, or in use in this state.

History: **En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975; R.C.M. 1947, 90-159.**

Cross-References

State standards of weight and measure, 30-12-103.

30-12-202. Specific powers and duties of department — rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, which rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of servicemen and service agencies.

(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus shall be considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus shall be considered to be "incorrect".

History: **En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975; R.C.M. 1947, 90-160.**

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-203. Licensing of weighing devices. (1) No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity.

(2) Such license shall be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license should include at least one inspection per year.

(3) Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 5.00
500 pounds through 1,999 pounds	8.00
2,000 pounds through 7,999 pounds	15.00
8,000 pounds through 60,000 pounds	40.00
60,001 pounds or more	70.00

(4) The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

(5) All licenses shall be annual and shall expire on December 31.

(6) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before July 1 of the year in which the license fee is due. In addition, any person failing to pay the renewal license fee before July 1 shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973; R.C.M. 1947, 90-160.1; amd. Sec. 1, Ch. 591, L. 1983.

Compiler's Comments

1983 Amendment: In (3), increased license fees from $2.50 to $5, from $4 to $8, from $10 to $15, from $20 to $40, and from $35 to $70; increased the weight range on the last two categories of (3) from 40,000 to 60,000 pounds and from 40,001 pounds or more to 60,001 pounds or more; in (6) substituted existing language for "Any person failing to pay the renewal license fee when due as required by this section shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures."

Cross-References

Licensing — discrimination, 49-3-204.

30-12-204. Testing at state-supported institutions. The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings in writing to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975; R.C.M. 1947, 90-161.

30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and test to ascertain if they are correct all weights and measures kept, offered, or exposed for sale.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or of count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register his name and address with the department, in order that his equipment can be tested in accordance with the provisions of this law.

History: **En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975; R.C.M. 1947, 90-162.**

Cross-References

Itinerant merchants, Title 80, ch. 3, part 7.

30-12-206. Investigations. The department shall investigate complaints made to it concerning violations of parts 1 through 5. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of parts 1 through 5 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: **En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975; R.C.M. 1947, 90-163.**

30-12-207. Inspection of packages. (1) The department shall from time to time weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

History: **En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975; R.C.M. 1947, 90-164.**

Cross-References

Offenses and penalties, 30-12-504.

30-12-208. Stop-use, stop-removal, and removal orders. The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being or susceptible of being commercially used and issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery whenever in the course of enforcement of parts 1 through 5 it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

History: **En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975; R.C.M. 1947, 90-165.**

30-12-209. Disposition of correct and incorrect apparatus. (1) The department shall approve for use and seal or mark with appropriate devices those weights and measures which it finds upon inspection and test to be "correct" as defined in 30-12-202 and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon inspection or test, to be "incorrect" as defined in 30-12-202 but which in its best judgment are susceptible of satisfactory repair.

(2) The department shall condemn, and may seize and destroy, weights and measures found to be incorrect which, in its best judgment, are not susceptible of satisfactory repair.

(3) Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by 30-12-211 or if used or disposed of contrary to the requirements of 30-12-211.

(4) Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under 30-12-202.

History: **En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975; R.C.M. 1947, 90-166.**

Cross-References

Offenses and penalties, 30-12-504.

30-12-210. Police powers. In enforcing the provisions of parts 1 through 5 or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

History: **En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975; R.C.M. 1947, 90-167.**

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department shall remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period as may be authorized by the department.

(3) In place of this, the owner may dispose of them, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, or until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975; R.C.M. 1947, 90-169.

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

Part 3

Method of Sale of Commodities

30-12-301. Method of sale of commodities — general. (1) Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure.

(2) The department may adopt reasonable rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975; R.C.M. 1947, 90-170.

Cross-References

Local government — authority to weigh, measure, and regulate certain commodities, 7-21-4203.

Specific powers and duties of Department — rules, 30-12-202.

30-12-302. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions. (1) Except as otherwise provided in parts 1 through 5, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package definite, plain, and conspicuous declarations of:

(a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container;

(b) the net quantity of the contents in terms of weight, measure, or count; and

(c) in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection (1)(b), neither the qualifying term "when packed" nor words of similar import nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection (1)(b), the department shall by rule establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure;

(b) exemptions as to small packages; and

(c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits sold in conformance with part 4.

History: **En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975; R.C.M. 1947, 90-171.**

Cross-References

Specific powers and duties of Department — rules, 30-12-202.

30-12-303. Declarations of unit price on random packages. In addition to the declarations required by 30-12-302, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: **En. Sec. 20, Ch. 99, L. 1969; R.C.M. 1947, 90-172.**

30-12-304. Misleading packages. A commodity in package form may not be wrapped or in a container made, formed, or filled so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

History: **En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975; R.C.M. 1947, 90-173.**

Cross-References

Offenses and penalties, 30-12-504.

30-12-305. Advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as required by law or regulation to appear on the package, provided:

(1) that where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement; and

(2) that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed", "minimum", "not less than", or any other terms of similar import or any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in the package.

History: **En. Sec. 22, Ch. 99, L. 1969; R.C.M. 1947, 90-174.**

30-12-306. Sale by net weight. When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed and all contracts concerning commodities shall be so construed.

History: **En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975; R.C.M. 1947, 90-175.**

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-307. Misrepresentation of price. Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

History: **En. Sec. 24, Ch. 99, L. 1969; R.C.M. 1947, 90-176.**

Cross-References

Offenses and penalties, 30-12-504.

Part 4

Sale of Specific Commodities

30-12-401. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood, except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969; R.C.M. 1947, 90-177.

Cross-References

Method of sale of commodities — general, 30-12-301.

30-12-402. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread produced or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh ½ pound, 1 pound, 1 ½ pounds, or a multiple of 1 pound, avoirdupois weight, within reasonable variations or tolerances that shall be adopted by rules of the department. This section does not apply to biscuits, buns, or rolls weighing 8 ounces or less or to "stale bread" sold and expressly represented at the time of sale as such.

History: En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975; R.C.M. 1947, 90-178.

Cross-References

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

Flour and bread, Title 50, ch. 34.

30-12-403. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight and only in units of ¼ pound, ½ pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969; R.C.M. 1947, 90-179.

Cross-References

Manufactured dairy products, Title 81, ch. 22.

30-12-404. Fluid dairy products. All fluid dairy products including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk shall be packaged for retail sale only in units of less than 1 gill, units of 1 gill, ½ liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, 3 liquid quarts, 1 gallon, 1 ½ gallons, 2 gallons, 2 ½ gallons, or multiples of 1 gallon.

History: En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977; R.C.M. 1947, 90-180.

30-12-405. Flour, cornmeal, and hominy grits. When in package form and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, cornmeal, and hominy grits shall be packaged only in units of 2, 5, 10, 25, 50, or 100 pounds, avoirdupois weight. Packages in units of less than 2 pounds or more than 100 pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969; R.C.M. 1947, 90-181.

Cross-References

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

Flour and bread, Title 50, ch. 34.

30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;

(b) the name and address of the purchaser; and

(c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity or shall be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: **En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975; R.C.M. 1947, 90-182.**

Cross-References

Method of sale of commodities — general, 30-12-301.

Sale by net weight, 30-12-306.

30-12-407. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of 30-12-301. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and in clarity equal to type or printing, there shall be clearly stated:

(1) the name and address of the vendor;

(2) the name and address of the purchaser;

(3) the identity of the type of fuel comprising the delivery;

(4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered;

(5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: **En. Sec. 31, Ch. 99, L. 1969; R.C.M. 1947, 90-183.**

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

30-12-408. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of ½ dry pint, 1 dry pint, or 1 dry quart.

History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975; R.C.M. 1947, 90-184.

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful — exception. (1) Except as provided in subsection (2) or in Title 82, chapter 15, part 1, the sale, barter, or exchange of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(2) Suppliers of gasoline and distillates shall offer Montana petroleum wholesale distributors the option to buy gasoline and distillates either by gross volume actually delivered or on the assumption that the temperature of the product is 60 degrees Fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and may be applied only to single deliveries of 7,500 gallons or more or the metric equivalent. Any adjustments to volume during the temperature compensation process must be made in accordance with standards set under 82-15-103, 82-15-108, and 82-15-109. Purchasers who choose to exercise the option available under this subsection must be provided with invoice listings of both net and gross gallons.

(3) This section does not apply to the exchange or transfer of gasoline and distillates between refiners or transporters of petroleum or petroleum products.

History: En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977; R.C.M. 1947, 13-812; amd. Sec. 1, Ch. 166, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted "except" clause and after "sale" inserted "barter, or exchange"; and inserted (2) and (3).

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

Part 5

Offenses and Penalties

30-12-501. Renumbered 30-12-106 by Code Commissioner, 1981.

30-12-502. Hindering or obstructing officer — penalties. A person who hinders or obstructs the department in any way in the performance of its official duties is guilty of a misdemeanor and upon conviction shall be fined not less than $20 or more than $200 or imprisoned not more than 3 months or both fined and imprisoned.

History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975; R.C.M. 1947, 90-186.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

30-12-503. Impersonation of officer — penalties. A person who in any way impersonates a person charged with enforcement of parts 1 through 5 by the department, by the use of its seal or a counterfeit of its seal or in any other manner, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975; R.C.M. 1947, 90-187.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

Impersonating a public servant, 45-7-209.

30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209, unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 must report to the department, in writing, the number and location of the weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity he represents of a commodity, thing, or service;

(f) take more than the quantity he represents of a commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more

than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 90-188.

Cross-References

Inspection of packages, 30-12-207.

Police powers, 30-12-210.

Duty of owners of incorrect apparatus, 30-12-211.

Dispensing of drugs, Title 37, ch. 2, part 1.

30-12-505. Injunction. The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of parts 1 through 5 of this chapter.

History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975; R.C.M. 1947, 90-189.

Cross-References

Police powers, 30-12-210.

30-12-506. Presumptive evidence. For the purposes of parts 1 through 5, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969; amd. Sec. 169, Ch. 431, L. 1975; R.C.M. 1947, 90-190.

Cross-References

Police powers, 30-12-210.

30-12-507. Validity of prosecutions. Prosecutions for violation of any provision of parts 1 through 5 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by parts 1 through 5.

History: En. Sec. 39, Ch. 99, L. 1969; R.C.M. 1947, 90-191.

Cross-References

Police powers, 30-12-210.

Part 6

Money of Account

30-12-601. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R.C.M. 1921; Cal. Pol. C. Sec. 3272; re-en. Sec. 4283, R.C.M. 1935; R.C.M. 1947, 90-501.

Cross-References

Judgment — how amount expressed, 25-9-203.

Form and contents of writ, 25-13-301.

Money, 30-3-107.

30-12-602. Limitation. The provisions of 30-12-601 do not vitiate or affect any account, charge, or entry originally made or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R.C.M. 1921; Cal. Pol. C. Sec. 3273; re-en. Sec. 4284, R.C.M. 1935; R.C.M. 1947, 90-502.

Parts 7 through 9 reserved

Part 10

Paints — Labeling

30-12-1001. Paints — label — contents of label. A person, firm, or corporation who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coating, or additive for wood, metal, concrete, or roof coating, but excluding artists' colors, waxes, and polishes, shall label it in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, including the analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition may be inspected by the chief chemist of a laboratory designated by the department of commerce.

History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R.C.M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974; R.C.M. 1947, 90-701; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

30-12-1002. Enforcement of part. The department of commerce shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, tube, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection.

History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R.C.M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974; R.C.M. 1947, 90-702; amd. Sec. 6, Ch. 137, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

30-12-1003. Designation of laboratory for analysis. The department of commerce shall designate the laboratory where analysis of the products described in 30-12-1001 shall be made. When products are found to be in violation of this part, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in 30-12-1001 is presumptive evidence of the facts stated in it.

History: En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R.C.M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974; R.C.M. 1947, 90-703; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

30-12-1004. County attorney duties. The county attorney of the county where the violation of this part occurred shall prosecute every person, firm, or corporation violating this part when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.

History: En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R.C.M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974; R.C.M. 1947, 90-704.

30-12-1005. Possession as evidence. The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in 30-12-1001 and not properly labeled as provided by 30-12-1001 is prima facie evidence that those articles or substances are kept for sale in violation of this part.

History: En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R.C.M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974; R.C.M. 1947, 90-705.

30-12-1006. Penalty for violations. A person, firm, or corporation who violates this part shall be prosecuted and fined not less than $25 or more than $100 and all costs, including cost of analysis to the amount of $25, or shall be imprisoned in the county jail for not more than 60 days.

History: En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R.C.M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974; R.C.M. 1947, 90-706.

CHAPTER 13

ASSUMED BUSINESS NAMES, TRADEMARKS, AND RELATED RIGHTS

Part 1 — General Provisions

Section

30-13-101 through 30-13-107. Repealed.
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30-13-111. Repealed.
30-13-112. Registration of farm and ranch names.
30-13-113 through 30-13-120 reserved.
30-13-121. Goodwill of business.
30-13-122. Goodwill transferable.
30-13-123 through 30-13-130 reserved.
30-13-131. Product of the mind — ownership.
30-13-132. Joint authorship.
30-13-133. Transfer.
30-13-134. Effect of publication.
30-13-135. Subsequent inventor or author.
30-13-136. Private writings.

30-13-137 through 30-13-140 reserved.
30-13-141. Definitions.
30-13-142. Unauthorized manufacture of sound recordings prohibited.
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30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited.
30-13-145. Forfeiture.
30-13-146. Exceptions.
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30-13-201. Definitions.
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30-13-203. Application for registration of assumed business name.
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30-13-215. Effect of transacting business without certificate.
30-13-216. Evidentiary effect of certificates and documents of secretary of state.
30-13-217. Fees and charges to be established and collected by secretary of state.
30-13-218. Execution constituting affirmation — penalty — warning.

Part 3 — Trademarks

30-13-301. Definitions.
30-13-302. When mark considered used in this state.
30-13-303. Registrability.
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30-13-311. Application for registration.
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30-13-313. Duration and renewal.
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30-13-315. Assignment.
30-13-316. Filing of assignment — issuing certificate of assignment.
30-13-317. Records.
30-13-318. Cancellation.
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30-13-320. Secretary of state to establish and collect fees commensurate with costs.
30-13-321 through 30-13-330 reserved.
30-13-331. Classification.
30-13-332. Fraudulent registration.
30-13-333. Infringement.
30-13-334. Injury to business reputation — dilution.
30-13-335. Remedies.
30-13-336. Common-law rights.

Part 1

General Provisions

30-13-101 through 30-13-107. Repealed. Sec. 22, Ch. 429, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

30-13-101. En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R.C.M. 1921; Cal. Pol. C. Sec. 3196; re-en. Sec. 4286, R.C.M. 1935; R.C.M. 1947, 85-101.

30-13-102. En. Sec. 1370, Civ. C. 1895; re-en. Sec. 4565, Rev. C. 1907; re-en. Sec. 6812, R.C.M. 1921; Cal. Civ. C. Sec. 991; Based on Field Civ. C. Sec. 435; re-en. Sec. 6812, R.C.M. 1935; R.C.M. 1947, 67-1110.

30-13-103. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R.C.M. 1921; Cal. Pol. C. Sec. 3197; re-en. Sec. 4287, R.C.M. 1935; R.C.M. 1947, 85-102.

30-13-104. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R.C.M. 1921; Cal. Pol. C. Sec. 3198; amd. Sec. 1, Ch. 68, L. 1931; re-en. Sec. 4288, R.C.M. 1935; amd. Sec. 16, Ch. 117, L. 1961; R.C.M. 1947, 85-103.

30-13-105. En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R.C.M. 1921; Cal. Pol. C. Sec. 3199; re-en. Sec. 4289, R.C.M. 1935; R.C.M. 1947, 85-104.

30-13-106. En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R.C.M. 1921; re-en. Sec. 4291, R.C.M. 1935; R.C.M. 1947, 85-106.

30-13-107. (1)En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R.C.M. 1921; re-en. Sec. 4290, R.C.M. 1935; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977; Sec. 85-105, R.C.M. 1947; (2)En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R.C.M. 1921; re-en. Sec. 4292, R.C.M. 1935; amd. Sec. 7, Ch. 265, L. 1977; Sec. 85-107, R.C.M. 1947; R.C.M. 1947, 85-105, 85-107.

30-13-108 through 30-13-110 reserved.

30-13-111. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3285, Civ. C. 1895; re-en. Sec. 5509, Rev. C. 1907; re-en. Sec. 8024, R.C.M. 1921; re-en. Sec. 8024, R.C.M. 1935; R.C.M. 1947, 63-606.

30-13-112. Registration of farm and ranch names. The owner of any farm or ranch in the state of Montana may, upon the payment of $1 to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be furnished a certificate by said clerk and recorder issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner. When any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R.C.M. 1921; re-en. Sec. 6897, R.C.M. 1935; R.C.M. 1947, 73-109.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

30-13-113 through 30-13-120 reserved.

30-13-121. Goodwill of business. The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

History: En. Sec. 1371, Civ. C. 1895; re-en. Sec. 4566, Rev. C. 1907; re-en. Sec. 6813, R.C.M. 1921; Cal. Civ. C. Sec. 992; Field Civ. C. Sec. 436; re-en. Sec. 6813, R.C.M. 1935; R.C.M. 1947, 67-1111.

Cross-References
Warranty on sale of goodwill, 30-11-221.

30-13-122. Goodwill transferable. The goodwill of a business is property, transferable like any other.

History: En. Sec. 1372, Civ. C. 1895; re-en. Sec. 4567, Rev. C. 1907; re-en. Sec. 6814, R.C.M. 1921; Cal. Civ. C. Sec. 993; Field Civ. C. Sec. 437; re-en. Sec. 6814, R.C.M. 1935; R.C.M. 1947, 67-1112.

Cross-References
Warranty on sale of goodwill, 30-11-221.

30-13-123 through 30-13-130 reserved.

30-13-131. Product of the mind — ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership therein and in the representation or expression thereof which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

History: En. Sec. 1360, Civ. C. 1895; re-en. Sec. 4559, Rev. C. 1907; re-en. Sec. 6806, R.C.M. 1921; Cal. Civ. C. Sec. 980; Field Civ. C. Sec. 429; re-en. Sec. 6806, R.C.M. 1935; R.C.M. 1947, 67-1104.

Cross-References
State ownership of work of art, 22-2-407.
Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

30-13-132. Joint authorship. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

(1) if the product is single, in equal proportions;
(2) if it is not single, in proportion to the contribution of each.

History: En. Sec. 1361, Civ. C. 1895; re-en. Sec. 4560, Rev. C. 1907; re-en. Sec. 6807, R.C.M. 1921; Cal. Civ. C. Sec. 981; Field Civ. C. Sec. 430; re-en. Sec. 6807, R.C.M. 1935; R.C.M. 1947, 67-1105.

30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his interest in the same.

History: En. Sec. 1362, Civ. C. 1895; re-en. Sec. 4561, Rev. C. 1907; re-en. Sec. 6808, R.C.M. 1921; Cal. Civ. C. Sec. 982; Field Civ. C. Sec. 431; re-en. Sec. 6808, R.C.M. 1935; R.C.M. 1947, 67-1106; amd. Sec. 7, Ch. 137, L. 1979.

30-13-134. Effect of publication. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner, so far as the law of this state is concerned.

History: En. Sec. 1363, Civ. C. 1895; re-en. Sec. 4562, Rev. C. 1907; re-en. Sec. 6809, R.C.M. 1921; Cal. Civ. C. Sec. 983; Field Civ. C. Sec. 432; re-en. Sec. 6809, R.C.M. 1935; R.C.M. 1947, 67-1107.

30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under him.

History: En. Sec. 1364, Civ. C. 1895; re-en. Sec. 4563, Rev. C. 1907; re-en. Sec. 6810, R.C.M. 1921; Cal. Civ. C. Sec. 984; Field Civ. C. Sec. 433; re-en. Sec. 6810, R.C.M. 1935; R.C.M. 1947, 67-1108.

30-13-136. Private writings. Letters and other private communications in writing belong to the person to whom they are addressed and delivered, but they cannot be published against the will of the writer except by authority of law.

History: **En. Sec. 1365, Civ. C. 1895; re-en. Sec. 4564, Rev. C. 1907; re-en. Sec. 6811, R.C.M. 1921; Cal. Civ. C. Sec. 985; Field Civ. C. Sec. 434; re-en. Sec. 6811, R.C.M. 1935; R.C.M. 1947, 67-1109.**

30-13-137 through 30-13-140 reserved.

30-13-141. Definitions. As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) "Person" means any individual, firm, partnership, corporation, or association.

(2) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) "Performer" means the person or persons appearing in a performance.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

History: **En. Sec. 1, Ch. 367, L. 1977; R.C.M. 1947, 85-601.**

30-13-142. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. Sec. 2, Ch. 367, L. 1977; R.C.M. 1947, 85-602; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236,

32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-143. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 3, Ch. 367, L. 1977; R.C.M. 1947, 85-603.

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 4, Ch. 367, L. 1977; R.C.M. 1947, 85-604.

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-145. Forfeiture. Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

History: En. Sec. 5, Ch. 367, L. 1977; R.C.M. 1947, 85-605.

30-13-146. Exceptions. Sections 30-13-141 through 30-13-147 do not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

History: **En. Sec. 6, Ch. 367, L. 1977; R.C.M. 1947, 85-606.**

30-13-147. Civil litigation. Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

History: **En. Sec. 7, Ch. 367, L. 1977; R.C.M. 1947, 85-607.**

Part 2

Assumed Business Names

Part Cross-References

Business corporations — corporate names, Title 35, ch. 1, part 3.

Foreign corporations — corporate names, 35-1-1006.

Nonprofit corporations — corporate names, 35-2-301.

Foreign nonprofit corporations — corporate names, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means any business name other than the full, true, and correct name of a person.

(2) "Person" means any individual, partnership, corporation, or other association.

History: **En Sec. 1, Ch. 260, L. 1979.**

30-13-202. Registration of assumed business name — when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation or limited partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words.

History: **En Sec. 2, Ch. 260, L. 1979; amd. Sec. 134, Ch. 575, L. 1981; amd. Sec. 1, Ch. 455, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (2).

1981 Amendment: (In (1)) inserted "name" after "limited partnership"; inserted "or reserved" after "registered".

Cross-References

Registration of ranch and farm names, 30-13-112.

30-13-203. Application for registration of assumed business name. All persons transacting business in this state under an assumed business name shall execute and file with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of proposed assumed business name;

(3) date of first use, in commerce, of assumed business name;

(4) description of business transacted under such name; and

(5) the name of county or counties in which business is being transacted.

History: **En Sec. 3, Ch. 260, L. 1979; amd. Sec. 2, Ch. 174, L. 1983.**

Compiler's Comments

1983 Amendment: In lead-in, after "execute" deleted ", verify,".

30-13-204. Filing application for registration — issuance of certificate. (1) One original and one copy of application for registration of an assumed business name shall be executed and delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration, to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

(3) The registration of an assumed business name remains in effect until canceled.

History: **En Sec. 4, Ch. 260, L. 1979; amd. Sec. 1, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: At beginning of (1), substituted "One original and one copy" for "Duplicate originals"; inserted "executed and" before "delivered"; in (1)(a), substituted "the original and the copy" for "each of the duplicate originals"; in (1)(b), substituted "the original" for "one of the duplicate originals"; in (1)(c), substituted "copy" for "other original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited. No foreign corporation or foreign limited partnership which does not have an effective certificate of authority or certificate of registration to transact business in this state may register an assumed business name as provided for in this part.

History: **En Sec. 5, Ch. 260, L. 1979; amd. Sec. 2, Ch. 455, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted "or foreign limited partnership" and "or certificate of registration".

30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of

5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of such applicant.

(3) If the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of such registration, the secretary of state shall cancel the registration.

History: En Sec. 6, Ch. 260, L. 1979.

30-13-207. Application for renewal of assumed business name. One original and one copy of an application for renewal of registration of an assumed business name shall be executed and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted.

History: En Sec. 7, Ch. 260, L. 1979; amd. Sec. 2, Ch. 131, L. 1983; amd. Sec. 3, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, at beginning of section, substituted "One original and one copy" for "Duplicate originals"; and made minor phraseology changes.

Chapter 174, in lead-in, after "executed" deleted ", verified,".

30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. (1) If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The certificate of renewal, together with the copy of the application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 8, Ch. 260, L. 1979; amd. Sec. 3, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a), substituted "the original and the copy" for "each of the duplicate originals"; in (1)(b), substituted "the original" for "one of the duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

30-13-209. Amendment. An amendment to registration of an assumed business name shall be filed with the secretary of state within 60 days after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name.

History: **En Sec. 9, Ch. 260, L. 1979.**

30-13-210. Filing amendment to registration of assumed business name — issuance of certificate thereon. (1) One original and one copy of an amendment to the registration of an assumed business name, executed and verified on forms furnished by the secretary of state, shall be delivered to the secretary of state. The application for amended registration of an assumed business name shall include but not be limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with such registered assumed business name;

(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name(s) of the new county or counties;

(g) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of such fact; and

(h) a statement that the amended registration of assumed business name supersedes the original registration and all amendments thereto.

(2) If the secretary of state finds that the application for amended registration of assumed business name complies with this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment, to which he shall affix the copy.

(3) The certificate of amendment, together with the copy of the amendment affixed thereto by the secretary of state, shall be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section shall result in the cancellation by the secretary of state of the registration.

History: **En Sec. 10, Ch. 260, L. 1979; amd. Sec. 4, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of the duplicate originals"; in (2)(b), substituted "the original" for "one of the duplicate originals"; in (2)(c), substituted "copy" for "other duplicate original"; in (3), substituted "copy" for "duplicate original"; and made minor phraseology changes.

30-13-211. Reservation of proposed assumed business name. Any authorized person who has not commenced business but intends to commence business may reserve an assumed business name which is not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(1) the complete assumed business name to be reserved;

(2) the name and address, including street name and number, if any, of applicant;

(3) the date applicant intends to commence business;

(4) description of business applicant intends to transact; and

(5) the county or counties in which applicant intends to conduct business.

History: En Sec. 11, Ch. 260, L. 1979.

30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) One original and one copy of an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of reservation, to which he shall affix the copy.

(2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 12, Ch. 260, L. 1979; amd. Sec. 5, Ch. 131, L. 1983; amd. Sec. 4, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of the duplicate originals"; in (1)(b), substituted "the original" for "one of the duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Chapter 174, in (1), after "executed" deleted "and verified".

30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel such registration, he shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which shall include but not be limited to the following information:

(a) complete name of the registered assumed business name to be canceled; and

(b) name and address, including the street name and number, if any, of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, he shall file it in his office and mail a letter of acknowledgment of such filing to the registrant of record.

History: **En Sec. 13, Ch. 260, L. 1979.**

30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business. (1) If the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.

(2) If the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

History: **En Sec. 14, Ch. 260, L. 1979.**

30-13-215. Effect of transacting business without certificate. No person or persons conducting or transacting business in this state without an effective certificate of registration of an assumed business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name.

History: **En Sec. 15, Ch. 260, L. 1979.**

30-13-216. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in his office in accordance with the provisions of this part when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein.

History: **En Sec. 16, Ch. 260, L. 1979.**

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

30-13-217. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section.

History: **En Sec. 17, Ch. 260, L. 1979; amd. Sec. 3, Ch. 119, L. 1985.**

Compiler's Comments

1985 Amendment: Substituted present language for "The secretary of state shall collect for:

(1) filing application for registration of assumed business name and issuing certificate thereon, $15;

(2) filing application for renewal of registration of assumed business name and issuing certificate thereon, $10;

(3) filing amendment to registration of assumed business name and issuing certificate thereon, $10;

(4) filing application for reservation of assumed business name and issuing certificate thereon, $15; and

(5) filing any other instrument not provided for in this section, $5."

30-13-218. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 1, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

Part 3

Trademarks

30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(3) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(4) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(5) "Person" means any individual, firm, partnership, corporation, association, union, or other organization.

(6) "Applicant" means the person filing an application for registration of a trademark under this part or his legal representatives, successors, or assigns.

(7) "Registrant" means the person to whom the registration of a trademark under this part is issued or his legal representatives, successors, or assigns.

History: En. Sec. 1, Ch. 429, L. 1979.

30-13-302. When mark considered used in this state. For purposes of this part, a mark is considered to be used in this state:

(1) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

History: En. Sec. 2, Ch. 429, L. 1979.

30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) comprises immoral, deceptive, or scandalous matter; or

(b) comprises matter which may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; or

(c) comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation thereof; or

(d) comprises the name, signature, or portrait of any living individual, except with his written consent; or

(e) comprises a mark that:

(i) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) However, nothing in subsection (1)(e) prevents the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years immediately preceding the date of the filing of the application for registration.

History: En. Sec. 3, Ch. 429, L. 1979.

30-13-304 through 30-13-310 reserved.

30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of such mark.

(4) The application for registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 4, Ch. 429, L. 1979; amd. Sec. 6, Ch. 131, L. 1983; amd. Sec. 6, Ch. 174, L. 1983; amd. Sec. 4, Ch. 119, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted "as provided for in 30-13-320" for "of $20, payable to the secretary of state".

1983 Amendments: Chapter 131, in (3), substituted "two copies of a specimen or facsimile" for "in duplicate".

Chapter 174, in (2), substituted "signed by the applicant" for "signed and verified by affidavit of the applicant".

30-13-312. Filing application and issuing certificate of registration. (1) One original and one copy of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of mark affixed thereto, shall be returned to the applicant.

(3) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such mark in any judicial proceeding in any court of this state.

History: En. Sec. 5, Ch. 429, L. 1979; amd. Sec. 7, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each such duplicate original"; substituted "word" for "words"; deleted "for record" after "filed"; in (1)(b), substituted "the original" for "one such duplicate original"; in (1)(c), substituted "copy" for "other duplicate original"; and in (2), substituted "copy" for "duplicate original".

30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of 10 years from the date of registration, and upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed by the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 6, Ch. 429, L. 1979; amd. Sec. 7, Ch. 174, L. 1983; amd. Sec. 5, Ch. 119, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted "as provided for in 30-13-320" for "of $20, payable to the secretary of state".

1983 Amendment: In (3), substituted "signed by the applicant" for "signed and verified by affidavit of the applicant".

30-13-314. Filing application for renewal of registration — issuing certificate of renewal. (1) One original and one copy of an application for renewal of mark registration must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of renewal of registration, together with the copy of the application for renewal of mark registration affixed thereto, shall be returned to the applicant.

(3) A mark registration may be renewed for successive periods of 10 years in the manner provided for in subsections (1) and (2).

(4) The secretary of state shall notify registrants of marks of the necessity of renewal within the year immediately preceding the expiration of the 10 years from the date of registration, by writing to the last-known address of the registrants.

(5) Any registration in force on July 1, 1979, expires 10 years from the date of the registration or from the date of the last renewal thereof or on July 1, 1980, whichever is later, if renewal of mark registration is not effected in the manner provided for in this part.

(6) The secretary of state shall, by January 1, 1981, notify each person who registered a mark prior to July 1, 1980, of the date of expiration of such registration unless renewed in accordance with the provisions of this part, by writing to the last-known address of the registrant.

History: En. Sec. 7, Ch. 429, L. 1979; amd. Sec. 8, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each such duplicate original"; substituted "word" for "words"; deleted "for record" after "filed"; in (1)(b), substituted "the original" for "one such duplicate original"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; substituted "mark" for "of the mark".

30-13-315. Assignment. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 8, Ch. 429, L. 1979; amd. Sec. 9, Ch. 131, L. 1983; amd. Sec. 6, Ch. 119, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted "as provided for in 30-13-320" for "of $20, payable to the secretary of state".

1983 Amendment: In (2), substituted "One original and one copy" for "Duplicate originals".

30-13-316. Filing of assignment — issuing certificate of assignment. (1) One original and one copy of the assignment of a mark must be delivered to the secretary of state. If the secretary of state finds that the assignment complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of assignment to which he shall affix the copy.

(2) The certificate of assignment, together with the copy of assignment of a mark affixed thereto, shall be returned to the assignee.

History: En. Sec. 9, Ch. 429, L. 1979; amd. Sec. 10, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each such duplicate original"; in (1)(b), substituted "the original" for "one such duplicate original"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

30-13-317. Records. The secretary of state shall keep for public examination a record of all marks registered or renewed under this part.

History: En. Sec. 10, Ch. 429, L. 1979.

30-13-318. Cancellation. The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;

(2) any registration for which he receives a written request for cancellation, signed and verified by the registrant or the assignee of record and accompanied by fees as prescribed in this part;

(3) each registration granted under this part and not renewed in accordance with the provisions of this part;

(4) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds.

History: En. Sec. 11, Ch. 429, L. 1979; amd. Sec. 8, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In (2), before "request" changed "voluntary" to "written", before "the registrant" inserted "signed and verified by", and at end inserted "and accompanied by fees as prescribed in this part"; and made minor changes in phraseology.

30-13-319. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 5, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

30-13-320. Secretary of state to establish and collect fees commensurate with costs. The secretary of state shall by administrative rule establish and provide for collection of fees and miscellaneous charges for filing documents and issuing certificates as required by this part. The fees must be commensurate with the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.

History: En. Sec. 1, Ch. 119, L. 1985.

30-13-321 through 30-13-330 reserved.

30-13-331. Classification. (1) The following general classes of goods and services are established for convenience of administration of this part. This classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods or services comprised in a single class with regard to which the mark is actually being used. However, in no event may a single application include goods or services that fall within different classes of goods or services.

(2) The classes of goods are as follows:

(a) raw or partly prepared materials;
(b) receptacles;
(c) baggage, animal equipments, portfolios, and pocketbooks;
(d) abrasive and polishing materials;
(e) adhesives;
(f) chemicals and chemical compositions;
(g) cordage;
(h) smokers' articles, not including tobacco products;
(i) explosives, firearms, equipment, and projectiles;
(j) fertilizers;
(k) inks and inking materials;
(l) construction materials;
(m) hardware and plumbing and steamfitting supplies;
(n) metals and metal casting and forgings;
(o) oils and greases;
(p) paints and painters' materials;
(q) tobacco products;
(r) medicines and pharmaceutical preparations;
(s) vehicles;
(t) linoleum and oil cloth;
(u) electrical apparatus, machines, and supplies;
(v) games, toys, and sporting goods;
(w) cutlery, machinery, and tools, and parts thereof;
(x) laundry appliances and machines;
(y) locks and safes;
(z) measuring and scientific appliances;
(aa) horological instruments;
(bb) jewelry and precious metal ware;
(cc) brooms, brushes, and dusters;
(dd) crockery, earthenware, and porcelain;
(ee) filters and refrigerators;
(ff) furniture and upholstery;
(gg) glassware;
(hh) heating, lighting, and ventilating apparatus;
(ii) belting, hose, machinery packing, and nonmetallic tires;
(jj) musical instruments and supplies;
(kk) paper and stationery;
(ll) prints and publications;
(mm) clothing;
(nn) fancy goods, furnishings, and notions;
(oo) canes, parasols, and umbrellas;
(pp) knitted, netted, and textile fabrics, and substitutes therefor;
(qq) thread and yarn;
(rr) dental, medical, and surgical appliances;
(ss) soft drinks and carbonated waters;
(tt) foods and ingredients of foods;
(uu) wines;
(vv) malt beverages and liquors;
(ww) distilled alcoholic liquors;

(xx) merchandise not otherwise classified;
(yy) cosmetics and toilet preparations;
(zz) detergents and soaps.
(3) The classes of services are as follows:
(a) miscellaneous;
(b) advertising and business;
(c) insurance and financial;
(d) construction and repair;
(e) communications;
(f) transportation and storage;
(g) material treatment;
(h) education and entertainment.

History: **En. Sec. 12, Ch. 429, L. 1979.**

30-13-332. Fraudulent registration. Any person who, for himself or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the provisions of this part by knowingly making any false or fraudulent representation, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of such filing or registration. Such damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

History: **En. Sec. 13, Ch. 429, L. 1979.**

30-13-333. Infringement. (1) Subject to the provisions of 30-13-336, any person is liable in a civil action brought by the lawful owner of a registered mark under 30-13-335 if such person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

History: **En. Sec. 14, Ch. 429, L. 1979.**

30-13-334. Injury to business reputation — dilution. Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this part or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

History: **En. Sec. 15, Ch. 429, L. 1979.**

30-13-335. Remedies. (1) Any owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant to be destroyed.

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state.

History: En. Sec. 16, Ch. 429, L. 1979.

30-13-336. Common-law rights. Nothing in this part adversely affects the rights or the enforcement of rights in marks acquired at common law in good faith at any time.

History: En. Sec. 17, Ch. 429, L. 1979.

Cross-References

Common law applicability, 1-1-108.

CHAPTER 14

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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Chapter Cross-References

Protection of consumers from unfair practices of corporations, Art. XIII, sec. 1, Mont. Const.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Part 1

Consumer Protection Act

Part Cross-References

Consumer counsel, Art. XIII, sec. 2, Mont. Const.

Policy of Montana Alcoholic Beverage Code, 16-1-101.

Policy of Montana Cigarette Sales Act, 16-10-102.

Violation of consumer reporting agencies law as violation of this part, 31-3-153.

Consumer Product Safety Act of 1975, Title 50, ch. 30.

30-14-101. Short title. This part shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973".

History: En. Sec. 19, Ch. 275, L. 1973; R.C.M. 1947, 85-418.

30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of commerce created in 2-15-1801.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material includes the inspection, study, or copying of such material and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

History: En. Sec. 1, Ch. 275, L. 1973; R.C.M. 1947, 85-401; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

30-14-103. Unlawful practices. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973; R.C.M. 1947, 85-402.

Cross-References

Violation of consumer reporting agencies law as violation of this part, 31-3-153.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

Illegal branding or altering or obscuring a brand, 45-6-327.

30-14-104. Federal interpretation — rules determining unfair competition and deception. (1) It is the intent of the legislature that in construing 30-14-103 due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(2) The department may make rules interpreting the provisions of 30-14-103. Such rules shall not be inconsistent with the rules, regulations, and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

History: En. Sec. 3, Ch. 275, L. 1973; R.C.M. 1947, 85-403.

30-14-105. Exemptions. Nothing in this part shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this part or the United States;

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service;

(3) national advertising.

History: En. Sec. 4, Ch. 275, L. 1973; R.C.M. 1947, 85-404.

30-14-106 through 30-14-110 reserved.

30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction or temporary restraining order the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action where the relief to be sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973; R.C.M. 1947, 85-405; amd. Sec. 1, Ch. 394, L. 1979.

Cross-References

Enforcement by Department, 30-14-220.

30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be violative of this part from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111.

History: En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977; R.C.M. 1947, 85-409.

30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

History: **En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977; R.C.M. 1947, 85-410.**

Cross-References

Investigations, 30-14-221.

30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and promulgate rules as may be necessary, which rules shall have the force of law; provided that none of the powers conferred by this part may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: **En. Sec. 11, Ch. 275, L. 1973; R.C.M. 1947, 85-411.**

Cross-References

Investigations, 30-14-221.

30-14-115. Service of process — how made. Service of any notice, demand, or subpoena under this part shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: **En. Sec. 12, Ch. 275, L. 1973; R.C.M. 1947, 85-412.**

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

30-14-116 through 30-14-120 reserved.

30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney or attorney general shall make a report thereon to the department within 30 days of the final disposition of the matter.

History: **En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977; R.C.M. 1947, 85-416.**

30-14-122. Employment of investigator by county attorney. The county attorney in first- and second-class counties may designate an employee to act as a full-time investigator.

History: **En. Sec. 17, Ch. 275, L. 1973; R.C.M. 1947, 85-417.**

30-14-123 through 30-14-130 reserved.

30-14-131. Restoration. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: **En. Sec. 6, Ch. 275, L. 1973; R.C.M. 1947, 85-406.**

30-14-132. Powers of receiver — proof of damages — jurisdiction. (1) When a receiver is appointed by the court pursuant to this part, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: **En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977; R.C.M. 1947, 85-407.**

30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial

pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.

History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977; R.C.M. 1947, 85-408.

Cross-References

Rules of Civil Procedure, Title 25, ch. 20.

30-14-134. Enforcement of department orders — contempt. If any person fails or refuses to file any statement or report or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state; revoking or suspending the certificate of authority to do business in this state of a foreign corporation; or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required until the person files the statement or report or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973; R.C.M. 1947, 85-413.

30-14-135 through 30-14-140 reserved.

30-14-141. Dissolution or forfeiture of corporate franchise. Upon petition by the department, the district court may, in its discretion, order the dissolution, suspension, or forfeiture of franchise of any corporation which violates the terms of any injunction issued under 30-14-111.

History: En. Sec. 15, Ch. 275, L. 1973; R.C.M. 1947, 85-415.

30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause shall be continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared

unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103.

History: En. Sec. 14, Ch. 275, L. 1973; R.C.M. 1947, 85-414; amd. Sec. 8, Ch. 137, L. 1979; amd. Sec. 2, Ch. 394, L. 1979.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Part 2

Unfair Trade Practices Generally

30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part shall be literally construed so that its beneficial purposes may be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977; R.C.M. 1947, 51-501.

30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(2) "Business" includes any person, as defined in (8), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost", as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(5) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;
(c) interest on borrowed capital;
(d) depreciation;
(e) selling cost;
(f) maintenance of equipment;
(g) delivery costs;
(h) credit losses;
(i) all types of licenses;
(j) taxes;
(k) insurance and advertising.

(6) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(7) "Department" means the department of commerce provided for in 2-15-1801.

(8) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(9) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (7).

30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person or business for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503; amd. Sec. 135, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "business" for "firm or corporation" in two places.

Cross-References

Accountability for conduct of corporation, 45-2-312.

30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504; amd. Sec. 136, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "or business" for "firm or corporation".

Cross-References

Terms denoting state of mind, 1-1-204.
Definitions and state of mind, 45-2-101.

30-14-205. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.

Cross-References

Unlawful practices, 30-14-103.

30-14-206. Labor excepted. The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.

30-14-207. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or

selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: **En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.**

Cross-References

Sales below cost — evidence of unlawful intent, 16-10-301.

Sale defined, 30-11-101.

Unlawful practices, 30-14-103.

30-14-208. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: **En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.**

Cross-References

Montana product preference provisions, 18-1-112.

Montana Small Business Purchasing Act, Title 18, ch. 5, part 3.

30-14-209. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: **En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.**

Cross-References

Unlawful practices, 30-14-103.

30-14-210. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: **En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.**

30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.

History: En. Sec. 12A, Ch. 80, L. 1937, added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L. 1975; Sec. 51-114, R.C.M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977; R.C.M. 1947, 51-511.

Cross-References

Department authority, 30-14-114.

30-14-212. Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade and such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R.C.M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977; R.C.M. 1947, 51-512.

30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions.

History· En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R.C.M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977; R.C.M. 1947, 51-513.

30-14-214. Fair price for agricultural products. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this part.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this part for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. Such action is punishable under the terms provided in this part.

History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R.C.M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977; R.C.M. 1947, 51-514.

30-14-215. Rebates forbidden. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and when such payment or allowance tends to destroy competition, is an unfair trade practice, and any person resorting to such trade practice is guilty of a misdemeanor and on conviction is subject to the penalties set out in 30-14-224.

(2) However, nothing in this section prevents a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers, or consumers the whole or any part of the net earnings

or surplus resulting from its trading operations in proportion to their purchases or sales from, to, or through the association.

History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R.C.M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977; R.C.M. 1947, 51-515.

Cross-References

Unlawful practices, 30-14-103.

30-14-216. Pooling of grain prohibited. (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R.C.M. 1921; Sec. 94-1115, R.C.M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10912, R.C.M. 1935; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977; R.C.M. 1947, 51-516.

30-14-217. Destruction of food. It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R.C.M. 1921; Sec. 94-1117, R.C.M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10914 R.C.M.; amd. and redes. 51-517, by Sec. 17, Ch. 518, L. 1977; R.C.M. 1947, 51-517.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, part 2.

30-14-218. Alteration of invoices prohibited. It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 30-14-224.

History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R.C.M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977; R.C.M. 1947, 51-518.

Cross-References

Alteration — commercial paper, 30-3-407.
Altered warehouse receipts, 30-7-208.
Altered bills of lading, 30-7-306.
Unlawful practices, 30-14-103.

30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of

30-14-205 through 30-14-218 is an illegal contract and no recovery thereon may be had.

History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R.C.M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977; R.C.M. 1947, 51-522.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

30-14-220. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring such person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring such person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section shall be given precedence over other civil cases pending in the district court and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.

History: **En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R.C.M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977; R.C.M. 1947, 51-519.**

Cross-References

Department to restrain unlawful acts, 30-14-111.

Department authority, 30-14-114.

Enforcement of Department orders — contempt, 30-14-134.

30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a

witness is compelled to testify if the department determines, in its sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: **En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R.C.M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977; R.C.M. 1947, 51-520; amd. Sec. 2, Ch. 577, L. 1983; amd. Sec. 2, Ch. 101, L. 1985.**

Compiler's Comments

1985 Amendment: In second sentence of (3) substituted "department" for "commissioner" in two places.

1983 Amendment: In (3), in first sentence after "forfeiture" substituted language from "but no" through end of subsection for "An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled to testify or produce evidence after having claimed his privilege against self-incrimination. An individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying."

Cross-References

Investigative demand, 30-14-113.

Perjury, 45-7-201.

30-14-222. Injunctions — damages — production of evidence. (1) Any person, if injured thereby, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-218 and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the defendant from a continuance thereof. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition the books and records of any such defendant may be brought into court and introduced into evidence by reference. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under 30-14-205 through 30-14-218 and 30-14-224.

History: **En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R.C.M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977; R.C.M. 1947, 51-521.**

Cross-References

Authentication and identification, Art. IX, Montana Rules of Evidence (see Title 26, ch. 10).

Contents of writings, recordings, and photographs, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).

30-14-223. Department to institute suit. Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 by any business, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such business and to permanently enjoin it from transacting business in this state. If in such action the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the business from doing business in this state permanently or for such time as the court orders or shall annul the charter or revoke the franchise of such business.

History: **En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R.C.M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977; R.C.M. 1947, 51-523; amd. Sec. 137, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "business" for "corporation" in five places.

30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 30-14-206 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him in such business for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524; amd. Sec. 9, Ch. 137, L. 1979.

Part 3

Motion Picture Fair Trade Practices Act

Part Cross-References

Theater licenses, 7-21-2205.

Public display of offensive material, 45-8-202.

Certain motion picture theater employees not liable for prosecution, 45-8-203.

Theaters — sanitary inspections, 50-1-203.

30-14-301. Short title. This part shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

History: En. Sec. 1, Ch. 214, L. 1981.

30-14-302. Purpose. The purposes of this part are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

History: En. Sec. 2, Ch. 214, L. 1981.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

30-14-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a

license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. Such showing shall be open to any exhibitor interested in exhibiting the motion picture, and such exhibitor or his buying agency will be notified of such trade screening.

History: En. Sec. 3, Ch. 214, L. 1981.

30-14-304. Blind bidding prohibited. No distributor or exhibitor may engage in blind bidding.

History: En. Sec. 4, Ch. 214, L. 1981.

30-14-305. License agreements — unlawful provisions. (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding entered into after October 1, 1981, that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

History: En. Sec. 5, Ch. 214, L. 1981.

Cross-References

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Contracts — what is unlawful, 28-2-701.
Contracts — what conditions void, 28-2-707.

30-14-306. Bid requirements. If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion picture that is the subject of the invitation to bid.

History: En. Sec. 6, Ch. 214, L. 1981.

30-14-307. Void acts. Any provision of an invitation to bid or a license agreement entered into after October 1, 1981, that waives any of the prohibitions of or fails to comply with this part is void and unenforceable.

History: En. Sec. 7, Ch. 214, L. 1981.

Cross-References

Contracts — what conditions void, 28-2-707.

30-14-308. Violation a misdemeanor. It is unlawful for any person to willfully violate any provision of this part. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

History: En. Sec. 8, Ch. 214, L. 1981.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 4

Uniform Trade Secrets Act

Part Cross-References

Hazardous chemical information — trade secret confidentiality, 50-78-205.

30-14-401. Short title. This part may be cited as the "Uniform Trade Secrets Act".

History: En. Sec. 1, Ch. 104, L. 1985.

30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: En. Sec. 2, Ch. 104, L. 1985.

30-14-403. Injunctive relief — royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

History: **En. Sec. 3, Ch. 104, L. 1985.**

Cross-References

Injunctions, Title 27, ch. 19.

30-14-404. Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

History: **En. Sec. 4, Ch. 104, L. 1985.**

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

30-14-405. Costs and attorney fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

History: **En. Sec. 5, Ch. 104, L. 1985.**

Cross-References

Costs and attorney fees, Title 25, ch. 10.

30-14-406. Preservation of secret. In an action under this part, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: **En. Sec. 6, Ch. 104, L. 1985.**

30-14-407. Statute of limitations. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

History: **En. Sec. 7, Ch. 104, L. 1985.**

Cross-References

Statutes of Limitations — general provisions, Title 27, ch. 2, part 1.

30-14-408. Effect on other law. (1) This part displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

(b) criminal liability for misappropriation of a trade secret.

History: En. Sec. 8, Ch. 104, L. 1985.

30-14-409. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of this act among states enacting it.

History: En. Sec. 9, Ch. 104, L. 1985.

Part 5

Personal Solicitation Sales

30-14-501. Purpose. The purpose of this part is to afford consumers subjected to high pressure personal solicitation sales tactics a cooling-off period.

History: En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977; R.C.M. 1947, 85-501.

30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977; R.C.M. 1947, 85-502.1; amd. Sec. 138, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "child" after "minor" in (2)(c).

30-14-503. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the identity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: **En. 85-502.2 by Sec. 3, Ch. 191, L. 1977; R.C.M. 1947, 85-502.2.**

Cross-References

Sales, Title 30, ch. 11, parts 1, 2.

30-14-504. Buyer's right to cancel — time allowed — notice — return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: **En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977; R.C.M. 1947, 85-503.**

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-505. Notice of right to cancel. (1) The seller shall furnish the buyer a notice which contains the statement set forth in subsection (a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED
I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977; R.C.M. 1947, 85-504.

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-506. Repayment to buyer — retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 426, L. 1973; amd. Sec. 6, Ch. 191, L. 1977; R.C.M. 1947, 85-505; amd. Sec. 10, Ch. 137, L. 1979.

Cross-References

Sales and exchanges, Title 30, ch. 11, part 1.

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk, and such goods must be returned in substantially the same condition as received.

History: **En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977; R.C.M. 1947, 85-506.**

30-14-508. Violation. Except where inconsistent with the provisions of this part, a violation of this part is a violation of part 1.

History: **En. 85-507 by Sec. 8, Ch. 191, L. 1977; R.C.M. 1947, 85-507.**

Part 6

Sale of Imitation Indian Articles

30-14-601. Definitions. As used in this part, the following definitions apply:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship.

History: **En. Sec. 1, Ch. 42, L. 1967; R.C.M. 1947, 85-301.**

30-14-602. Articles to be designated and segregated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles shall be physically segregated from authentic Indian articles for display purposes.

History: **En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973; R.C.M. 1947, 85-302.**

Cross-References

Warranty defined, 30-11-209.

30-14-603. Designation of authenticity. Only those articles bearing a registered trademark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: **En. Sec. 3, Ch. 42, L. 1967; R.C.M. 1947, 85-303.**

Cross-References

Warranty defined, 30-11-209.

30-14-604. Violation as misdemeanor. Any person who violates this part is guilty of a misdemeanor.

History: **En. Sec. 4, Ch. 42, L. 1967; R.C.M. 1947, 85-304.**

Cross-References

When no penalty is specified, 46-18-212.

Part 7

Fraudulent Financing of Mining and Oil Companies

Part Cross-References

Minerals, Oil, and Gas, Title 82.

30-14-701. Mining and oil companies — fraudulent handling of finances. For the purposes of 30-14-701 through 30-14-704, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(1) failure to expend at least 75% of all money raised from the public from the sale of stock or securities of any other kind or character in the actual operation and development of the oil and mining property or in the construction of treating plants or from bona fide payments on the purchase price of state property;

(2) failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness, or reasonable development of said properties;

(3) the operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

History: En. Sec. 1, Ch. 199, L. 1935; re-en. Sec. 11458.1, R.C.M. 1935; Sec. 94-2322, R.C.M. 1947; redes. 15-22-141 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-141.

30-14-702. Application. The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 do not apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state securities commissioner or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange.

History: En. Sec. 2, Ch. 199, L. 1935; re-en. Sec. 11458.2, R.C.M. 1935; Sec. 94-2323, R.C.M. 1947; redes. 15-22-142 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-142; amd. Sec. 1, Ch. 84, L. 1983.

Compiler's Comments

1983 Amendment: In middle of second sentence, changed "investment department" to "securities commissioner".

30-14-703. Investigation of complaints. Any stockholder or creditor of a mining or oil company as heretofore provided in 30-14-701 through 30-14-704 who has bona fide reason to believe that the provisions of 30-14-701 through 30-14-704 have been violated may complain relative thereto to the attorney general of the state, the county attorney of the county in which the property is located, or the state securities commissioner, and it shall be incumbent upon the officers mentioned to make a complete investigation of the records and affairs of said corporation or corporations. In the event the facts disclose the violation of the provisions of 30-14-701 through 30-14-704, it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

History: En. Sec. 3, Ch. 199, L. 1935; re-en. Sec. 11458.3, R.C.M. 1935; Sec. 94-2324, R.C.M. 1947; redes. 15-22-143 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-143; amd. Sec. 8, Ch. 351, L. 1979.

30-14-704. Penalty. Any person or the officers or directors of any corporation, cooperative association, or any other association of any kind or character found guilty of the violation of the provisions of 30-14-701 through 30-14-704 shall be subject to imprisonment in the state prison for a term of not less than 90 days or more than 3 years or by a fine of not less than $100 or more than $1,000 or both such fine and imprisonment.

History: En. Sec. 4, Ch. 199, L. 1935; re-en. Sec. 11458.4, R.C.M. 1935; Sec. 94-2325, R.C.M. 1947; redes. 15-22-144 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-144.

Parts 8 through 10 reserved

Part 11

Plain Language in Contracts (Applicable as provided in Part Compiler's Comments)

Part Compiler's Comments

Delayed Applicability: Section 8, Ch. 615, L. 1985, provided: "This act applies to consumer contracts [as defined in 30-14-1102] entered into after July 1, 1987".

30-14-1101. Short title. This part may be cited as the "Plain Language in Contracts Act".

History: En. Sec. 1, Ch. 615, L. 1985.

30-14-1102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

History: En. Sec. 2, Ch. 615, L. 1985.

30-14-1103. Requirements for contracts. (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if:

(a) it is written in a clear and coherent manner using words with common and everyday meanings;

(b) it is appropriately divided and captioned by its various sections;

(c) it uses type of readable size;

(d) it uses ink that contrasts with the paper.

History: En. Sec. 3, Ch. 615, L. 1985.

30-14-1104. Scope. (1) Except as provided in subsection (2), 30-14-1103 applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) Section 30-14-1103 does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds $50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) consumer transactions subject to the provisions of 33-15-321 through 33-15-329;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality;

(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate.

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of this part; nor is a legal description of real property a violation of this part.

History: En. Sec. 4, Ch. 615, L. 1985.

30-14-1105 through 30-14-1110 reserved.

30-14-1111. Consumer's remedy. (1) Except as otherwise provided in 30-14-1112, if an agreement does not comply with the requirements of 30-14-1103, the seller, lessor, or lender is liable to a consumer who signed the agreement in an amount equal to:

(a) $50 plus any actual damages; and

(b) costs of the action.

(2) A consumer may bring an action under this section in any court of competent jurisdiction.

History: En. Sec. 5, Ch. 615, L. 1985.

30-14-1112. Limitations on remedies. (1) A consumer may not bring an action under 30-14-1111 after the date on which his obligations in connection with the agreement are scheduled to be finally performed.

(2) No seller, lessor, or lender is liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) No consumer may bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part.

History: **En. Sec. 6, Ch. 615, L. 1985.**

30-14-1113. Remedies cumulative — waiver void. (1) Nothing in this part precludes a consumer from making any claim or raising any defense that would have been available to the consumer if this part were not in effect.

(2) A consumer may not waive the rights provided by this part, and any such waiver is void.

History: **En. Sec. 7, Ch. 615, L. 1985.**

CHAPTER 15

FOREIGN-TRADE ZONES

Part 1 — General Provisions

Section
30-15-101. Authority to establish, operate, and maintain a foreign-trade zone.
30-15-102. Exemption from state licensing requirements and regulations.
30-15-103. Jurisdiction of state.
30-15-104. Taxation of corporations operating foreign-trade zones and their goods.

Part 1

General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone. (1) The state of Montana, a local government unit, or a private or public corporation organized in Montana for the purpose of operating a foreign-trade zone in Montana may apply for the right to and, if the right is granted, establish, operate, and maintain a foreign-trade zone under 19 USC 81a through 19 USC 81u.

(2) The governing body of a local government unit may contract with a private or public corporation to operate and maintain a foreign-trade zone that the local government unit has been granted the right to establish, operate, and maintain.

(3) Any activity authorized by the United States to be conducted within a foreign-trade zone may be conducted within a foreign-trade zone operated by a local government unit or Montana corporation under this section.

History: **En. Sec. 1, Ch. 674, L. 1979.**

30-15-102. Exemption from state licensing requirements and regulations. Goods may be held within a foreign-trade zone exclusive of any license, permit, or regulation of the state or any political subdivision of the state. Such goods may be sold or traded subject to the laws of the United States.

History: **En. Sec. 2, Ch. 674, L. 1979.**

Cross-References

Licensing — discrimination based on nationality prohibited, 49-3-204.

30-15-103. Jurisdiction of state. The state of Montana reserves jurisdiction in a foreign-trade zone in all civil and criminal matters except those related to customs, diversity suits with the requisite amount in controversy, or suits involving a federal question.

History: En. Sec. 3, Ch. 674, L. 1979.

30-15-104. Taxation of corporations operating foreign-trade zones and their goods. Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15.

History: En. Sec. 4, Ch. 674, L. 1979; amd. Sec. 3, Ch. 101, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (1) that read "All goods held in a foreign trade zone are subject to inventory taxation."

Cross-References

Corporation license or income tax, Title 15, ch. 31.

CHAPTER 16

SMALL BUSINESS LICENSING COORDINATION

Part 1 — General Provisions

Section
30-16-101. Short title.
30-16-102. Purpose.
30-16-103. Definitions.

Part 2 — Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center.
30-16-202. Information availability.
30-16-203. New licenses, permits, or modifications.

Part 1

General Provisions

30-16-101. Short title. This chapter may be cited as the "Montana Small Business Licensing Coordination Act".

History: En. Sec. 1, Ch. 453, L. 1981.

30-16-102. Purpose. The purposes of this chapter are to:

(1) eliminate retail, wholesale, consumer service, manufacturer, and distributor licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures; and

(3) distribute equitably the costs of licensing.

History: **En. Sec. 2, Ch. 453, L. 1981.**

30-16-103. Definitions. As used in this chapter, "license" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity. "License" does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, Title 75, and Title 80. Such licenses are excluded from the coverage of this chapter.

History: **En. Sec. 3, Ch. 453, L. 1981.**

Part 2

Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center. The governor shall designate an agency to administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the businessman in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process;

(12) perform other administrative tasks delegated to the center to improve state business license administration.

History: En. Sec. 4, Ch. 453, L. 1981.

Cross-References

State employees — not to assist person in obtaining license for a fee, 2-2-121.

"Agency action" — includes issuing license, 2-3-102.

"License" defined, 2-4-102.

Licenses — administrative procedure, 2-4-631.

Purpose of agency evaluation, 2-8-101.

Licensing — within quasi-judicial function, 2-15-102.

City Courts — jurisdiction for collection of license fee of city, 3-11-103.

Delegation of authority — includes licensing, 5-4-403.

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of ferries, 7-21-2201.

License required to do business as itinerant vendor of drugs, 7-21-2202.

Billiard, pool, or bagatelle table license, 7-21-2203.

Bowling alley license, 7-21-2204.

Theater licenses, 7-21-2205.

Traveling show licenses, 7-21-2206.

Exemption from entertainment license requirements, 7-21-2207.

Pawnbroker license, 7-21-2208.

Intelligence office license, 7-21-2209.

Shooting gallery license, 7-21-2210.

Railway warehouse license, 7-21-2211.

Soft drink manufacturing license, 7-21-2212.

Malt manufacturer's license, 7-21-2213.

Skating rink and merry-go-round license, 7-21-2214.

Laundry license, 7-21-2215.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Licensing of public dances and dancehalls, Title 7, ch. 21, part 26.

Municipal licensing authority, Title 7, ch. 21, part 41.

Regulation of certain activities, 7-21-4201.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

Suspension of license fees for persons in military service, 10-1-605.

State Tax Appeal Board — appeals regarding business licenses, 15-2-201.

Express company license tax, Title 15, ch. 54, part 1.

Freight line company license tax, Title 15, ch. 55, part 1.

Sleeping car company license tax, Title 15, ch. 56, part 1.

Store licenses, Title 15, ch. 57, part 1.

Coal retailer's license tax, Title 15, ch. 58, part 1.

License tax on producers and importers of gypsum and cement, 15-59-102.

License tax on sales of cement and byproducts, 15-59-201.

License and security of gasoline distributors, 15-70-202.

License to sell gasoline on which refund may be claimed, 15-70-203.

Special fuel dealer's licenses, 15-70-302.

Beer and wine licenses, Title 16, ch. 4, part 1.

All-beverages licenses, Title 16, ch. 4, part 2.

Special alcoholic beverage licenses, Title 16, ch. 4, part 3.

Cigarette licenses, 16-11-120.

Licensing textbook dealers, 20-7-604.

Race meet licensing, 23-4-201.

Card games — licensing by local governing bodies, 23-5-321.

Bingo and raffles — issuance of licenses by local governing bodies, 23-5-421.

Auctions — licensing powers of cities and towns, 30-11-516.

Licensing of weighing devices, 30-12-203.

Foreign-trade zone — exemption from state licensing requirements, 30-15-102.

Employment agency licensing, Title 39, ch. 5, part 2.

Foster home licensing, 41-3-1141.

Licensing nondiscrimination, 49-3-204.

Ambulance licensing, 50-6-306.

Fire protection equipment — licensing, 50-39-101.

Food establishments — licensing, Title 50, ch. 50, part 2.

Hotel and motel licensing, Title 50, ch. 51, part 2.

Tourist campground and trailer court licensing, Title 50, ch. 52, part 2.

Day-care center licensing, 53-4-502.

Adult foster family care licensure, 53-5-303.

Aeronautics licensing, Title 67, ch. 3.

Portable sawmill license, 76-13-502.

Butchers' and meat peddlers' licenses, 81-9-102.

Slaughterhouse license, 81-9-201.

Licensing of rendering or disposal plants, 81-9-301.

Hide dealer or buyer's license fee, 81-9-411.

Egg dealer's and egg grader's license, 81-20-201.

Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.

License required to operate manufactured dairy products plant, 81-22-201.

License required for milk or cream route, 81-22-204.

Milk — licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.

Petroleum dealer licenses, 82-15-105.

Wharves and docks licenses, 85-16-101.

30-16-202. Information availability. The small business licensing coordination center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordination center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

History: En. Sec. 7, Ch. 453, L. 1981.

Cross-References

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of ferries, 7-21-2201.

License required to do business as itinerant vendor of drugs, 7-21-2202.

Billiard, pool, or bagatelle table license, 7-21-2203.

Bowling alley license, 7-21-2204.

Theater licenses, 7-21-2205.

Traveling show licenses, 7-21-2206.

Exemption from entertainment license requirements, 7-21-2207.

Pawnbroker license, 7-21-2208.

Intelligence office license, 7-21-2209.

Shooting gallery license, 7-21-2210.

Railway warehouse license, 7-21-2211.

Soft drink manufacturing license, 7-21-2212.

Malt manufacturer's license, 7-21-2213.

Skating rink and merry-go-round license, 7-21-2214.

Laundry license, 7-21-2215.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Licensing of public dances and dancehalls, Title 7, ch. 21, part 26.

Municipal licensing authority, Title 7, ch. 21, part 41.

Regulation of certain activities, 7-21-4201.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

30-16-203. New licenses, permits, or modifications. Each state agency shall report to the coordination center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after April 20, 1981, together with the applicable forms and pertinent rules and information.

History: En. Sec. 8, Ch. 453, L. 1981.

TITLE 31

CREDIT TRANSACTIONS AND RELATIONSHIPS

Ch.
1. Credit Transactions.
2. Debtor and Creditor Relationships.
3. Related Credit Practices.

CHAPTER 1

CREDIT TRANSACTIONS

Part 1 — Loans of Money—Interest Rates

Section
31-1-101. Loan of money — what constitutes.
31-1-102. Loan to be repaid in current money.
31-1-103. Loan presumed to be on interest.
31-1-104. Interest defined.
31-1-105. Annual rate.
31-1-106. Legal interest.
31-1-107. Interest rate allowed by agreement.
31-1-108. Penalty for usury — action to recover excessive interest.
31-1-109. When interest becomes part of principal.
31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.
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Chapter Cross-References

Creation of state debt, Art. VIII, sec. 8, Mont. Const.

Debt limitations of local government entities, Art. VIII, sec. 10, Mont. Const.

Use of money borrowed by local government entity, Art. VIII, sec. 11, Mont. Const.

Functions of Department of Commerce, 2-15-1801.

Trust indentures and mortgages under housing law, 7-15-4463, 7-15-4506, 7-15-4521 through 7-15-4532.

Lending money for educational purposes, 20-30-402.

Gambling on credit prohibited, 23-5-314, 23-5-417, 23-5-505.

U.C.C. — sales, Title 30, ch. 2.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — letters of credit, Title 30, ch. 5.

U.C.C. — secured transactions, Title 30, ch. 9.

Sales of property, Title 30, ch. 11, part 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Authority of state banks to make real estate loans, 32-1-430, 32-1-431.

False statement to obtain loan, 32-1-474.

Credit life insurance, Title 33, ch. 21, part 1.

Attorneys prohibited from purchasing claims for purpose of bringing action thereon, 37-61-408.

Defrauding creditors, 45-6-315.

Issuing a bad check, 45-6-316.

Deceptive practices, 45-6-317.

Chain distributor schemes, 45-6-319.

Discrimination in credit prohibited, 49-2-101, 49-2-307, 49-3-206.

Method of filing lien on motor vehicles, 61-3-103.

Monopolies in financing sale of motor vehicles, Title 61, ch. 4, part 4.

Mortgages generally, Title 71, ch. 1.

Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

Pledges, Title 71, ch. 2.

Liens, Title 71, ch. 3.

Renewable resource development loans, Title 90, ch. 2, part 1.

Part 1

Loans of Money — Interest Rates

Part Cross-References

Rate of interest chargeable by building and loan associations, 32-2-401 through 32-2-406.

31-1-101. Loan of money — what constitutes. A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the law on loan for use.

History: En. Sec. 2580, Civ. C. 1895; re-en. Sec. 5206, Rev. C. 1907; re-en. Sec. 7720, R.C.M. 1921; Cal. Civ. C. Sec. 1912; Field Civ. C. Sec. 966; re-en. Sec. 7720, R.C.M. 1935; R.C.M. 1947, 47-119.

Cross-References

Financing programs of Montana Economic Development Board, 17-5-1505.

Contracts, Title 28, ch. 2, 3.

Assignment to be considered a loan, 31-1-308.

Banks borrowing money — limitations, 32-1-412.

Banks borrowing money for capital purposes — status of capital, 32-1-413.

Authority of state banks to make real estate loans, 32-1-430.

Limitation on real estate loans, 32-1-431.

Limitation on loans, 32-1-432.

Loans to managing officer or director, 32-1-467.

False statement to obtain loan, 32-1-474.

Building and loan associations — limitation on loans, 32-2-415.

Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

Credit unions — loans and insurance, Title 32, ch. 3, part 6.

Development Corporation Act — purposes, 32-4-102.

Consumer loan businesses, Title 32, ch. 5.

Deceptive practices — false statement to obtain loan, 45-6-317.

Loans for use or exchange — personal property, Title 70, ch. 7.

Rangeland improvement loan program, 76-14-111.

Conservation practice loan program, 76-15-541.

Agricultural loan authority — general provisions of loan agreements, 80-12-201.

Alternative or renewable energy grants or loans, Title 90, ch. 4, part 1.

Health facility authority — loan limitation, 90-7-213.

31-1-102. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: En. Sec. 2581, Civ. C. 1895; re-en. Sec. 5207, Rev. C. 1907; re-en. Sec. 7721, R.C.M. 1921; Cal. Civ. C. Sec. 1913; Field Civ. C. Sec. 967; re-en. Sec. 7721, R.C.M. 1935; R.C.M. 1947, 47-120.

Cross-References

Contracts, Title 28, ch. 2, 3.

"Money" defined, 30-1-201.

Money of account, Title 30, ch. 12, part 6.

31-1-103. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing.

History: En. Sec. 2582, Civ. C. 1895; re-en. Sec. 5208, Rev. C. 1907; re-en. Sec. 7722, R.C.M. 1921; Cal. Civ. C. Sec. 1914; Based on Field Civ. C. Sec. 968; re-en. Sec. 7722, R.C.M. 1935; R.C.M. 1947, 47-121.

Cross-References

Interest payable at bank on Saturday — how paid, 32-1-485.

Limit on interest and penalties — building and loan associations, 32-2-402.

Statement of interest rates — canceling loans, 32-2-403.

Loan for use, Title 70, ch. 7, part 1.

Loan for exchange, Title 70, ch. 7, part 2.

31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

History: En. Sec. 2583, Civ. C. 1895; re-en. Sec. 5209, Rev. C. 1907; re-en. Sec. 7723, R.C.M. 1921; Cal. Civ. C. Sec. 1915; Based on Field Civ. C. Sec. 969; re-en. Sec. 7723, R.C.M. 1935; R.C.M. 1947, 47-122.

31-1-105. Annual rate. When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: En. Sec. 2584, Civ. C. 1895; re-en. Sec. 5210, Rev. C. 1907; re-en. Sec. 7724, R.C.M. 1921; Cal. Civ. C. Sec. 1916; Field Civ. C. Sec. 970; re-en. Sec. 7724, R.C.M. 1935; R.C.M. 1947, 47-123.

31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or 31-1-111 and 31-1-112, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 10% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R.C.M. 1921; Cal. Civ. C. Sec. 1917; amd. Sec. 1, Ch. 144, L. 1933; re-en. Sec. 7725, R.C.M. 1935; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977; R.C.M. 1947, 47-124; amd. Sec. 3, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 263, L. 1985.

Compiler's Comments

1985 Amendment: In (1) increased interest rate from 6% to 10%.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

1981 Amendment: Inserted "or 31-1-111 and 31-1-112" following "Uniform Commercial Code" near the beginning of (1).

Cross-References

Redemptions from tax sales, 15-18-102.

Rate of interest on bonds — limitations and exceptions, 17-5-102.

Rate of interest on special assessments — limitations, 17-5-103.

Amount of interest on judgments, 25-9-205.

Damage claims — interest, 27-1-211.

Validity of interest rate set by contract, 27-1-213.

Acceptance of principal waives claim to interest, 27-1-214.

Offer of performance stops running of interest, 28-1-1202.

General validity of security agreement, 30-9-201.

31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing for the payment of any rate of interest not more than 6 percentage points per annum above the prime rate of major New York banks as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement, and such interest shall be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111.

History: En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R.C.M. 1921; Cal. Civ. C. Sec. 1918; re-en. Sec. 7726, R.C.M. 1935; amd. Sec. 1, Ch. 503, L. 1975; R.C.M. 1947, 47-125; amd. Sec. 2, Ch.

373, L. 1979; amd. Sec. 4, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 567, L. 1983.

Compiler's Comments

1983 Amendments — Composite Section: Chapter 9 made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

Chapter 567 substituted (1) for former text, which read: "(1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed according to the terms of the agreement.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed according to the terms of the agreement."; and inserted (2).

The amendments made by Ch. 567 were made to the version of 31-1-107, which was to be revived July 1, 1983. Chapter 9 made the temporary version of 31-1-107 permanent and was effective February 3, 1983. The Code Commissioner has added subsection (3), which was the amendment made permanent by Ch. 9, to the version of 31-1-107 as amended by Ch. 567.

1981 Amendment: Inserted (4) (now (3)).

Cross-References

Amount of interest on judgments, 25-9-205.

Limit of rate by contract, 27-1-213.

Wage brokers — rate, 31-1-305.

Pawnbrokers — interest, 31-1-401.

Building and loan associations — rate, 32-2-402.

Consumer loan businesses — rate, 32-5-301.

Conservation practice loan program — rate set by rule, 76-15-547.

Montana agricultural loan authority — rate, 80-12-201.

Health facility authority — rate, 90-7-202.

31-1-108. Penalty for usury — action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries or which has been agreed to be paid thereon.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging same a sum double the amount of interest so paid, provided that such action shall be brought within 2 years after the payment of said interest, and provided that, before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.

History: En. Sec. 2, Ch. 36, L. 1913; re-en. Sec. 7727, R.C.M. 1921; re-en. Sec. 7727, R.C.M. 1935; R.C.M. 1947, 47-126.

Cross-References

Amount of interest on judgments, 25-9-205.

Right to interest, 27-1-211.

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

31-1-109. When interest becomes part of principal. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal and thereafter bear the same rate of interest as the principal debt.

History: En. Sec. 2587, Civ. C. 1895; re-en. Sec. 5213, Rev. C. 1907; re-en. Sec. 7728, R.C.M. 1921; Cal. Civ. C. Sec. 1919; re-en. Sec. 7728, R.C.M. 1935; R.C.M. 1947, 47-127.

Cross-References

Amount of interest on judgment, 25-9-205.

Written contracts, Title 28, ch. 2, part 9.

31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.

31-1-111. Definition of regulated lender. The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.

History: En. Sec. 1, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in opening clause, inserted "consumer loan licensee".

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

Cross-References

Banks and trust companies, Title 32, ch. 1.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

Development corporations, Title 32, ch. 4.

31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance. (1) A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.

History: (1)En. Sec. 2, Ch. 275, L. 1981; (2)En. Sec. 4, Ch. 276, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 22, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 9 made (1) permanent.

Chapter 22 made (2) permanent. (Section was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981; sec. 5, Ch. 276, L. 1981.)

31-1-113. Limitation of rule of 78ths. The sum of the monthly time balances method of computing interest or refunds on prepayment, which is also known as the rule of 78ths, may not be used in any loan agreement or retail installment contract unless the term of the loan or contract does not exceed 61 months.

History: En. Sec. 3, Ch. 135, L. 1983.

Cross-References

Requirements of retail installment contracts, 31-1-231.

Refunds on prepayment, 31-1-242.

Consumer loan businesses — changes, 32-5-301.

Part 2

Retail Installment Sales

Part Cross-References

U.C.C. — sales, Title 30, ch. 2.

Purchase of chattel paper and instruments, 30-9-308.

Sales, Title 30, ch. 11.
Door-to-door sales, Title 30, ch. 14, part 5.
Montana Consumer Loan Act, Title 32, ch. 5.
Loans for use, Title 70, ch. 7, part 1.

31-1-201. Short title. This part may be cited as the "Montana Retail Installment Sales Act".

History: En. Sec. 1, Ch. 282, L. 1959; R.C.M. 1947, 74-601.

31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(g) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975; R.C.M. 1947, 74-602; amd. Sec. 1, Ch. 160, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 516, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(g) near beginning, after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1)(b).

Cross-References

Fees of Clerk of District Court, 25-1-201.

Contract defined, 28-2-101.

U.C.C. — "buyer in ordinary course of business" defined, 30-1-201.

U.C.C. — "holder" defined, 30-1-201.

U.C.C. — "goods" defined, 30-2-105.

U.C.C. — "sale" defined, 30-2-106.

U.C.C. — commercial paper — rights of a holder, Title 30, ch. 3, part 3.

"Motor vehicle" defined, 61-1-102.

"Motorcycle" defined, 61-1-105.

"Camper" defined, 61-1-129.

"Quadricycle" defined, 61-1-133.

31-1-203. Penalties. (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959; amd. Sec. 16, Ch. 185, L. 1977; amd. Sec. 3, Ch. 284, L. 1977; R.C.M. 1947, 74-611.

Cross-References

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

"Misdemeanor" defined, 45-2-101.

31-1-204. Waiver. Any waiver of the provisions of this part shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959; R.C.M. 1947, 74-612.

Cross-References

Contracts which violate the policy of the law — exemption from responsibility, 28-2-702.

31-1-205 through 31-1-210 reserved.

31-1-211. Powers of department. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon his being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;
(b) the answering of any question;
(c) the production of any evidence that may be proper; or
(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both.

History: En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977; R.C.M. 1947, 74-606.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contempts, Title 3, ch. 1, part 5.

Powers and duties of Department, 20-30-201.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Department authority, 30-14-114.

Investigations, 30-14-221.

Examination and supervision by Department, 32-1-211.

Reports and accounts prescribed by Department, 32-2-302.

Examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Entry, inspection, and investigation, 81-23-401.

31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

History: En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975; R.C.M. 1947, 74-605.

Cross-References

Subpoena for production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Consumer protection — Department investigations, 30-14-221.

Discrimination in credit transactions, 49-2-403.

31-1-213 through 31-1-220 reserved.

31-1-221. Licensing of sales finance companies required. (1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this part, except that no bank, trust company, or savings and loan association authorized to do business in this state shall be required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the department. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information as to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $100 for each place of business of the licensee in this state.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of such application and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this part for a period which shall expire December 31 next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this part under any other name.

(6) Fees collected under this chapter shall be deposited in the state special revenue fund for the use of the department in its supervision function.

History: En. Sec. 3, Ch. 282, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 74-603; amd. Sec. 8, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (6).

Cross-References

Consumer loan businesses — licensure requirements, Title 32, ch. 5, part 2.

Articles of incorporation, 35-1-202.

31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee.

History: **En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977; R.C.M. 1947, 74-604.**

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Contractual provisions relating to fraud, 28-2-404 through 28-2-406.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

Department to restrain unlawful acts, 30-14-111.

Consumer loan businesses — revocation and suspension of license, 32-5-207.

Unsworn falsification to authorities, 45-7-203.

31-1-223 through 31-1-230 reserved.

31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract shall be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (a) and (b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (c), (d), and (e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (f) and (g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act (15 U.S.C. 1601-1667e), the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all such requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 88, L. 1979; amd. Sec. 1, Ch. 89, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (8).

Cross-References

What contracts must be in writing, 28-2-903.

Consumer loan businesses — installment payment — contract period, 32-5-302.

Borrower to receive copy of contract or statement of contents, 32-5-303.

Motor vehicles — certain financing agreements prohibited, 61-4-403.

31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to him at his address shown in the contract a copy of the contract, signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

U.C.C. — sales — manner and effect of rightful rejection, 30-2-602.

31-1-233. Insurance. (1) The amount, if any, included for insurance which may be purchased by the holder of the contract shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department.

(2) All such insurance shall be written by an insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state.

(3) A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If such insurance for which such identified charge is made insures the life, safety, or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary thereof.

(6) The seller shall not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company, provided that:

(a) the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker, or company shall be optional with the seller.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

U.C.C. — sales — insurable interest in goods — manner of identification of goods, 30-2-501.

Accounts, contract rights, general intangibles and equipment relating to another jurisdiction — incoming goods already subject to a security interest, 30-9-103.

Consumer loan businesses — insurance, 32-5-306.

Insurance — compliance with Code required, 33-1-102.

Commissioner of Insurance — general powers and duties, 33-1-311.

31-1-234. Transfer of equity — fee. A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed $50.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 434, L. 1983.

Compiler's Comments

1983 Amendment: Increased fee from $15 to $50.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Assignment of nonnegotiable written contract, 28-2-206.

U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

31-1-235. Delinquency fee. The holder may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or $5, whichever is less, or in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding 15% of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

U.C.C. — secured transactions — termination statement, 30-9-404.

Consumer loan businesses — receipts — return of note, 32-5-304.

31-1-237 through 31-1-240 reserved.

31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer. The finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle.

(3) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(4) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(5) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(6) If the finance charge determined pursuant to subsection (2) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for such period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977; R.C.M. 1947, 74-608;

amd. Sec. 2, Ch. 160, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1981; amd. Secs. 1, 3, Ch. 22, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (6) and made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 5, Ch. 276, L. 1981.)

1981 Amendment: Section 1, Ch. 276, L. 1981, deleted all of the former section except the opening phrase of (1) ending with "a retail installment contract shall" and inserted the rest of the section.

Cross-References

"Interest" defined, 31-1-104.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-242. Refunds on prepayment. (1) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments.

(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

History: En. Sec. 9, Ch. 282, L. 1959; R.C.M. 1947, 74-609; amd. Sec. 1, Ch. 135, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (2), inserted "In a contract where the period of the contract does not exceed 61 months,"; inserted (3).

Cross-References

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made.

History: **En. Sec. 10, Ch. 282, L. 1959; amd. Sec. 2, Ch. 284, L. 1977; R.C.M. 1947, 74-610; amd. Sec. 2, Ch. 88, L. 1979; amd. Sec. 3, Ch. 276, L. 1981; amd. Sec. 1, Ch. 22, L. 1983.**

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 5, Ch. 276, L. 1981.)

1981 Amendment: Deleted language regarding refinancing motor vehicle retail installment contracts between "at the rate of the finance charge specified in 31-1-241" and "If all unpaid installments"; changed the reference at the end of the second sentence from "31-1-241(1)" to "31-1-241".

Cross-References

When interest becomes part of principal, 31-1-109.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

Consumer loan businesses — deferral charge — rate, 32-5-322.

Part 3

Wage Brokers

31-1-301. Wage brokers to procure license and give bond. No person, company, corporation, or association may establish or conduct the business of wage broker within the state unless such person, company, corporation, or association procures a license from the proper authorities and executes a bond in such sum as the authorities may require for the faithful carrying out of the provisions of this part and of the ordinances of any town or city in which the business may be carried on.

History: **En. Sec. 1, Ch. 56, L. 1911; re-en. Sec. 4173, R.C.M. 1921; re-en. Sec. 4173, R.C.M. 1935; R.C.M. 1947, 41-1501; amd. Sec. 3, Ch. 88, L. 1979.**

31-1-302. Issuance of license — terms and amount thereof. The board of county commissioners of any county in this state or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town may in its discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: **En. Sec. 2, Ch. 56, L. 1911; re-en. Sec. 4174, R.C.M. 1921; re-en. Sec. 4174, R.C.M. 1935; R.C.M. 1947, 41-1502.**

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

General licensing authority of municipalities, 7-21-4101.

Licensing — discrimination prohibited, 49-3-204.

31-1-303. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly, to any employee or wage earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage earner, shall be deemed to be a wage broker within the meaning of this part.

History: En. Sec. 3, Ch. 56, L. 1911; re-en. Sec. 4175, R.C.M. 1921; re-en. Sec. 4175, R.C.M. 1935; R.C.M. 1947, 41-1503.

31-1-304. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: En. Sec. 4, Ch. 56, L. 1911; re-en. Sec. 4176, R.C.M. 1921; re-en. Sec. 4176, R.C.M. 1935; R.C.M. 1947, 41-1504.

Cross-References

Wage assignments — limitations, 32-5-310.

31-1-305. Interest on loans — amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage earner in excess of 12% per annum. Said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage earner and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: En. Sec. 5, Ch. 56, L. 1911; re-en. Sec. 4177, R.C.M. 1921; re-en. Sec. 4177, R.C.M. 1935; R.C.M. 1947, 41-1505.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-306. Spouse must join in assignment of wages — acknowledgment. No assignment of wages or salary to a wage broker by a married person who shall have a spouse residing in this state shall be valid or enforceable without the consent of such spouse, evidenced by the spouse's signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments. No wage broker or person connected with a wage broker, directly or indirectly, shall be authorized to take any such acknowledgments.

History: En. Sec. 6, Ch. 56, L. 1911; re-en. Sec. 4178, R.C.M. 1921; re-en. Sec. 4178, R.C.M. 1935; amd. Sec. 23, Ch. 535, L. 1975; R.C.M. 1947, 41-1506.

Cross-References

By whom and where acknowledgments may be taken, 1-5-101.

Acknowledgment, Title 1, ch. 5, part 2.

Wage assignments — limitations, 32-5-310.

Earnings and accumulations of married person, 40-2-205.

Work and labor of married person, 40-2-207.

31-1-307. Assignments invalid without notice to employer — filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within 1 day from the date of its execution. All assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911; re-en. Sec. 4179, R.C.M. 1921; re-en. Sec. 4179, R.C.M. 1935; R.C.M. 1947, 41-1507.

Cross-References
Role and duties of county clerk, 7-4-2611.
Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

31-1-308. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage earner, and shall be subject to all the provisions of this part.

History: En. Sec. 8, Ch. 56, L. 1911; re-en. Sec. 4180, R.C.M. 1921; re-en. Sec. 4180, R.C.M. 1935; R.C.M. 1947, 41-1508.

Cross-References
Loan of money — what constitutes, 31-1-101.
Engaging in business of making loans restricted, 32-5-103.
Wage assignments — limitations, 32-5-310.

31-1-309. Violation — penalties. Any person, company, corporation, or association and any officer, member, agent, or employee thereof violating any or either of the provisions of 31-1-301 to 31-1-308, both inclusive, shall be deemed guilty of a misdemeanor and upon conviction shall be liable to a fine in the sum of not less than $100 or more than $500 for each offense or to imprisonment in the county jail for a period not to exceed 90 days, or both, and in addition thereto the debt and accrued interest thereon shall be discharged and the security shall be void.

History: En. Sec. 9, Ch. 56, L. 1911; re-en. Sec. 4181, R.C.M. 1921; amd. Sec. 1, Ch. 112, L. 1929; re-en. Sec. 4181, R.C.M. 1935; R.C.M. 1947, 41-1509.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

31-1-310. When note, instrument, or assignment void. Any note, bill, or other evidence of indebtedness and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this part shall be void as against the creditors of the assignor or transferor.

History: En. Sec. 10, Ch. 56, L. 1911; re-en. Sec. 4182, R.C.M. 1921; re-en. Sec. 4182, R.C.M. 1935; R.C.M. 1947, 41-1510.

Cross-References
When contract wholly void, 28-2-603.
Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Part 4

Pawnbrokers

Part Cross-References
County licensing of pawnbroker, 7-21-2208.
Regulation of pawnbrokers by city government, 7-21-4201, 7-21-4207, 7-21-4208.

31-1-401. Interest pawnbrokers may receive. No person may carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or his employees or agents may not charge more than 3% a month for interest, commission, discount, storage, and caring for property pledged.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R.C.M. 1921; re-en. Sec. 4186, R.C.M. 1935; amd. Sec. 12, Ch. 185, L. 1977; R.C.M. 1947, 66-1601.

Cross-References

Pawnbroker license, 7-21-2208.

Cities may license, 7-21-4201.

Legal interest, 31-1-106.

Engaging in business of making loans restricted, 32-5-103.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with:

(a) the date of the pawning or purchasing;

(b) date when the article must be redeemed;

(c) the name of the person by whom the same was pawned or by whom purchased; and

(d) the amount loaned thereon or paid therefor.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register:

(a) the name of the purchaser;

(b) the time of the sale; and

(c) the price paid therefor.

(3) The register must always be open to inspection and examination of any peace officer or other persons.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3315, Pol. C. 1895; re-en. Sec. 2110, Rev. C. 1907; re-en. Sec. 4191, R.C.M. 1921; re-en. Sec. 4191, R.C.M. 1935; R.C.M. 1947, 66-1606.

Cross-References

Authority to require records for pawnshops, secondhand and junk shops, 7-21-4207.

Enforceability of security interest — proceeds, formal requisites, 30-9-203.

Unlawful transactions with children, 45-5-623.

31-1-403. When search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been taken by theft or otherwise without his consent and that he has reason to believe or suspect and does suspect that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken and, if found, to seize and bring the same before him.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R.C.M. 1921; re-en. Sec. 4187, R.C.M. 1935; amd. Sec. 54, Ch. 359, L. 1977; R.C.M. 1947, 66-1602.

Cross-References

Searches and seizures, Art. II, sec. 11, Mont. Const.

Theft and related offenses, Title 45, ch. 6, part 3.

Searches and seizures — when authorized, 46-5-101.

Search warrant defined, 46-5-201.

Grounds for search warrant, 46-5-202.

31-1-404. Service of search warrant. The officer to whom said warrant is directed and delivered must execute the same and proceed in the same manner as in case of other search warrants.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3312, Pol. C. 1895; re-en. Sec. 2107, Rev. C. 1907; re-en. Sec. 4188, R.C.M. 1921; re-en. Sec. 4188, R.C.M. 1935; R.C.M. 1947, 66-1603.

Cross-References

Who may serve warrant, 46-5-205.

Service and execution of warrant, 46-5-206.

31-1-405. Delivery of property to claimant — bond. Upon any property seized by virtue of such warrant being brought before the magistrate who issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within 48 hours, the magistrate must cause the property to be delivered to the person from whose possession it was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3313, Pol. C. 1895; re-en. Sec. 2108, Rev. C. 1907; re-en. Sec. 4189, R.C.M. 1921; re-en. Sec. 4189, R.C.M. 1935; R.C.M. 1947, 66-1604.

Cross-References

Procedure in regard to property seized, Title 46, ch. 5, part 3.

31-1-406. Conditions of bond. The bond must be in a penal sum equal to double the value of the property claimed, with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will, on demand, pay all damage that may be recovered against him in any suit to be brought within 20 days from the date of such bond by the pawnbroker or junk dealer from whose possession the property was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3314, Pol. C. 1895; re-en. Sec. 2109, Rev. C. 1907; re-en. Sec. 4190, R.C.M. 1921; re-en. Sec. 4190, R.C.M. 1935; R.C.M. 1947, 66-1605.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

31-1-407. Violation a misdemeanor. A violation of any of the provisions of this part is a misdemeanor.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R.C.M. 1921; re-en. Sec. 4192, R.C.M. 1935; amd. Sec. 21, Ch. 513, L. 1973; amd. Sec. 13, Ch. 185, L. 1977; R.C.M. 1947, 66-1607.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty when none specified, 46-18-212.

Part 5

Retail Sales — Late Payment Charges

31-1-501. Late payment charges — accounts receivable for merchandise sold at retail. (1) Notwithstanding 31-1-106 or 31-1-107, a person who sells goods, as defined in 31-1-202, at retail to a retail buyer who promises to pay for such goods upon presentation of the bill therefor, may charge and collect a late payment charge not greater than 1 ½% per month on all money due on all accounts from 30 days after the date on which the obligation of the buyer to pay is incurred.

(2) The late payment charge provided in this section may be charged only if at the time the obligation was incurred the seller did not intend to extend any credit beyond 30 days and any late payment of the obligation was unintended.

(3) The provisions of this section do not apply to money due for intangible services, for services regulated by the public service commission, for real

property, for health care services, or for retail installment sales contracts or retail charge account agreements regulated under Title 31, chapter 1, part 2.

History: **En. Sec. 1, Ch. 222, L. 1981.**

31-1-502. Periodic statement to be furnished to debtor. (1) A seller may charge the late payment charge provided for in 31-1-501 only if he promptly supplies the buyer with a statement as of the end of each monthly period, or other regular period agreed upon by the seller and the buyer, in which there is any unpaid balance. Such statement shall recite the following:

(a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;

(b) the unpaid balance at the beginning or end of the period;

(c) an identification of any amounts debited to the buyer's account during the period;

(d) the payments made by the buyer to the seller during the period;

(e) the amount of the late payment charge and also the percentage annual simple interest equivalent of such amount; and

(f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

History: **En. Sec. 2, Ch. 222, L. 1981.**

CHAPTER 2

DEBTOR AND CREDITOR RELATIONSHIPS

Part 1 — General Provisions—Definitions

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31-2-104. Payments in preference.
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31-2-321. Rights of creditors whose claims have matured.
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31-2-324. Cases not provided for.
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Chapter Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Compromise of debt without seal valid, 1-4-207.

State debt collecting service, Title 17, ch. 4, part 1.

Teachers' retirement compensation exempt from garnishment, 19-4-706.

Challenge to jurors for cause — not to be taken for debtor-creditor relationship, 25-7-223.

Duration of judgment lien, 25-9-301.

Filing of transcript of judgment — when constitutes lien, 25-9-302.

Judgment lien of federal court, 25-9-303.

Execution against judgment debtor, Title 25, ch. 13, part 1.

Execution — supplementary proceeding — arrest of debtor, Title 25, ch. 14, part 1.

Proceedings against joint debtors, Title 25, ch. 15, part 1.

Availability of garnishment before and during action, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

When action for debt may be commenced in Justice's Court, 25-31-201 through 25-31-204.

How judgment entered against joint debtors, 25-31-905.

Judgment lien of Justice's Court, 25-31-914.

Execution of judgment of Justice's Court, Title 25, ch. 31, part 11.

Rebuttable presumption that obligation delivered to debtor has been paid, 26-1-602.

Remedies in general, Title 27.

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When promise to answer for debt must be in writing, 28-2-903.

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Credit extended to agent — exoneration of principal, 28-10-609.

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When factor may sell on credit, 30-11-603.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Partner's ability to bind partnership, 35-10-301.

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Effect of dissolution of partnership on partner's existing liability, 35-10-608.

Workers' compensation payment not assignable, 39-71-743.

Liability of spouses for each other's debts, 40-2-106, 40-2-205 through 40-2-209.

Deceptive practices, 45-6-317.

Debtor-creditor relationship created by deposit for exchange, 70-6-108.

Creditor may be made a party in action for partition of real estate, 70-29-105.

Homestead exemption, Title 70, ch. 32, part 2.

Foreclosure of mortgage, 71-1-222, et seq.

Debtor's misrepresentation of value of pledge, 71-2-110.

Effect of lien on rights of creditor, 71-3-110.

Creditor not included in term "distributee" under Uniform Probate Code, 72-1-103.

Creditors' claims against estate, Title 72, ch. 3, part 8.

Payment of debt of decedent to stop running of interest, 72-12-803.

When debt of testator not discharged by terms of will, 72-12-901.

Accountability of executor, 72-12-1003.

Part 1

General Provisions — Definitions

31-2-101. Debtor defined. A debtor is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: En. Sec. 4480, Civ. C. 1895; re-en. Sec. 6122, Rev. C. 1907; re-en. Sec. 8598, R.C.M. 1921; Cal. Civ. C. Sec. 3429; Field Civ. C. Sec. 1913; re-en. Sec. 8598, R.C.M. 1935; R.C.M. 1947, 18-101.

Cross-References

Proceedings in aid of execution against debtor, Title 25, ch. 14.

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

Performance by one of several joint debtors, 28-1-1102.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — debtor defined, 30-9-105.

Irrigation district — refusal of water to debtor, 85-7-1902.

31-2-102. Creditor defined. A creditor is one in whose favor an obligation exists, by reason of which he is or may become entitled to the payment of money.

History: En. Sec. 4481, Civ. C. 1895; re-en. Sec. 6123, Rev. C. 1907; re-en. Sec. 8599, R.C.M. 1921; Cal. Civ. C. Sec. 3430; Field Civ. C. Sec. 1914; re-en. Sec. 8599, R.C.M. 1935; R.C.M. 1947, 18-102.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

Extinction when directions of creditor followed, 28-1-1104.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — "creditor" defined, 30-1-201.

Fraudulent conveyances — "creditor" defined, 31-2-301.

Human rights — "creditor" defined, 49-2-101.

31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: En. Sec. 4482, Civ. C. 1895; re-en. Sec. 6124, Rev. C. 1907; re-en. Sec. 8600, R.C.M. 1921; Cal. Civ. C. Sec. 3431; Field Civ. C. Sec. 1915; re-en. Sec. 8600, R.C.M. 1935; R.C.M. 1947, 18-103.

Cross-References
Who may contract, 28-2-201.
Kinds of fraud, 28-2-404 through 28-2-406.
Liens, Title 71, ch. 3.

31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of his demand in preference to another.

History: En. Sec. 4483, Civ. C. 1895; re-en. Sec. 6125, Rev. C. 1907; re-en. Sec. 8601, R.C.M. 1921; Cal. Civ. C. Sec. 3432; Field Civ. C. Sec. 1916; re-en. Sec. 8601, R.C.M. 1935; R.C.M. 1947, 18-104.

Cross-References
Performance to one of several joint creditors, 28-1-1103.
Extinction when directions of creditor followed, 28-1-1104.
U.C.C. — "security interest" defined, 30-1-201.
U.C.C. — priority of security interests, Title 30, ch. 9, part 3.
Preference given for wages, 31-2-205.
Preference to be absolute, 31-2-206.
Certain rights not affected by preferences in assignment, 31-2-207.

31-2-105. Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim and another person has an interest in or is entitled as a creditor to resort to some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

History: En. Sec. 4484, Civ. C. 1895; re-en. Sec. 6126, Rev. C. 1907; re-en. Sec. 8602, R.C.M. 1921; Cal. Civ. C. Sec. 3433; Field Civ. C. Sec. 1917; re-en. Sec. 8602, R.C.M. 1935; R.C.M. 1947, 18-105.

Cross-References
Performance to one of several joint creditors, 28-1-1103.
U.C.C. — rights of third parties — perfected and unperfected security interests — rules of priority, Title 30, ch. 9, part 3.

31-2-106. Exempt property — bankruptcy proceeding. No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except property exempt from execution of judgment as provided in Title 25, chapter 13, part 6.

History: En. Sec. 1, Ch. 161, L. 1981.

Part 2

Assignments for Benefit of Creditors

Part Cross-References
Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.
Transfer in trust for benefit of creditors to be recorded, 70-21-202.

31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of his creditors, in conformity to the provisions of this part, subject, however, to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons.

History: En. Sec. 4510, Civ. C. 1895; re-en. Sec. 6136, Rev. C. 1907; re-en. Sec. 8612, R.C.M. 1921; Cal. Civ. C. Sec. 3449; Field Civ. C. Sec. 1924; re-en. Sec. 8612, R.C.M. 1935; R.C.M. 1947, 18-301.

Cross-References

Fraudulent conveyances — cases not provided for, 31-2-324.

Corporate shares, liability of assignee, 35-1-510.

Trusts in general, Title 72, ch. 20.

31-2-202. Insolvency — what constitutes. A debtor is insolvent, within the meaning of this part, when he is unable to pay his debts from his own means as they become due.

History: En. Sec. 4511, Civ. C. 1895; re-en. Sec. 6137, Rev. C. 1907; re-en. Sec. 8613, R.C.M. 1921; Cal. Civ. C. Sec. 3450; Field Civ. C. Sec. 1925; re-en. Sec. 8613, R.C.M. 1935; R.C.M. 1947, 18-302.

Cross-References

U.C.C. — "insolvent" defined, 30-1-201.

Fraudulent conveyances — "insolvency" defined, 31-2-302.

Nonprofit corporations — "insolvent" defined, 35-2-102.

31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

History: En. Sec. 4512, Civ. C. 1895; re-en. Sec. 6138, Rev. C. 1907; re-en. Sec. 8614, R.C.M. 1921; Cal. Civ. C. Sec. 3451; Field Civ. C. Sec. 1926; re-en. Sec. 8614, R.C.M. 1935; R.C.M. 1947, 18-303.

Cross-References

U.C.C. — multiple state secured transactions, 30-9-103.

31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: En. Sec. 4513, Civ. C. 1895; re-en. Sec. 6139, Rev. C. 1907; re-en. Sec. 8615, R.C.M. 1921; Cal. Civ. C. Sec. 3452; Field Civ. C. Sec. 1927; re-en. Sec. 8615, R.C.M. 1935; R.C.M. 1947, 18-304.

Cross-References

U.C.C. — secured transactions — policy and scope of chapter, 30-9-102.

U.C.C. — security interests arising under chapter on sales, 30-9-113.

31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay his debts or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such assignor for services rendered within 4 months immediately previous to such assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by such trustees or assignees before any other creditor of such assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; re-en. Sec. 4514, Civ. C. 1895; re-en. Sec. 6140, Rev. C. 1907; re-en. Sec. 8616, R.C.M. 1921; re-en. Sec. 8616, R.C.M. 1935; amd. Sec. 6, Ch. 109, L. 1943; R.C.M 1947, 18-305.

Cross-References

Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-206. Preference to be absolute. A preference in an assignment for the benefit of creditors can only be given absolutely and without reserving any power of revocation.

History: En. Sec. 4515, Civ. C. 1895; re-en. Sec. 6141, Rev. C. 1907; re-en. Sec. 8617, R.C.M. 1921; Field Civ. C. Sec. 1929; re-en. Sec. 8617, R.C.M. 1935; R.C.M. 1947, 18-306.

Cross-References

Payments in preference, 31-2-104.

31-2-207. Certain rights not affected by preferences in assignment. No provision in an assignment giving a preference to a creditor can affect or impair any right of another creditor to priority of payment, whether created by law or arising from an obligation or transaction of the parties.

History: En. Sec. 4516, Civ. C. 1895; re-en. Sec. 6142, Rev. C. 1907; re-en. Sec. 8618, R.C.M. 1921; Field Civ. C. Sec. 1930; re-en. Sec. 8618, R.C.M. 1935; R.C.M. 1947, 18-307.

Cross-References

Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-208. Joint and separate debts. Joint or joint and several debtors can prefer their joint creditors only out of joint property and can prefer the individual creditors of each only out of the separate property of each.

History: En. Sec. 4517, Civ. C. 1895; re-en. Sec. 6143, Rev. C. 1907; re-en. Sec. 8619, R.C.M. 1921; Field Civ. C. Sec. 1931; re-en. Sec. 8619, R.C.M. 1935; R.C.M. 1947, 18-308.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Joint obligations, Title 28, ch. 1, part 3.

31-2-209. Assignment — when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates 72-20-203(1).

History: En. Sec. 4518, Civ. C. 1895; re-en. Sec. 6144, Rev. C. 1907; re-en. Sec. 8620, R.C.M. 1921; Cal. Civ. C. Sec. 3457; Based on Field Civ. C. Sec. 1932; re-en. Sec. 8620, R.C.M. 1935; R.C.M. 1947, 18-309.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by his agent thereto authorized by writing.

(2) It must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with the last-mentioned sections.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud such creditors.

(4) The assent of the assignee, subscribed and acknowledged by him, must appear in writing embraced in or at the end of or endorsed upon the assignment before the same is recorded and, if separate from the assignment, must be duly acknowledged.

History: En. Sec. 4519, Civ. C. 1895; re-en. Sec. 6145, Rev. C. 1907; re-en. Sec. 8621, R.C.M. 1921; Cal. Civ. C. Sec. 3458; Based on Field Civ. C. Sec. 1933; re-en. Sec. 8621, R.C.M. 1935; R.C.M. 1947, 18-310.

Cross-References

Acknowledgments, Title 1, ch. 5, part 2.

Real property acknowledgment of transfer, 3-1-404.

Certificate of acknowledgment of transfer, 3-1-405.

What contracts must be in writing, 28-2-903.

What acts agent may perform, 28-10-105.

Agency — when written authorization necessary, 28-10-203.

U.C.C. — "good faith" defined, 30-1-201, 30-2-103.

31-2-211. Compliance necessary to validity of assignment. Unless the provisions of 31-2-210 are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: En. Sec. 4520, Civ. C. 1895; re-en. Sec. 6146, Rev. C. 1907; re-en. Sec. 8622, R.C.M. 1921; Cal. Civ. C. Sec. 3459; Field Civ. C. Sec. 1934; re-en. Sec. 8622, R.C.M. 1935; R.C.M. 1947, 18-311.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — what conditions void, 28-2-707.

31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than his assignor has in respect to things in action transferred by the assignment.

History: En. Sec. 4521, Civ. C. 1895; re-en. Sec. 6147, Rev. C. 1907; re-en. Sec. 8623, R.C.M. 1921; Cal. Civ. C. Sec. 3460; Field Civ. C. Sec. 1935; re-en. Sec. 8623, R.C.M. 1935; R.C.M. 1947, 18-312.

Cross-References

What defenses to action survive assignment of right to action, 27-1-503.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Defenses against assignee, 30-9-318.

31-2-213. Inventory required. Within 20 days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by 31-2-215, a full and true inventory showing:

(1) all the creditors of the assignor;

(2) the place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

(3) the sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

(4) the true consideration of the liability in each case and the place where it arose;

(5) every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

(6) all property of the assignor at the date of the assignment which is exempt by law from execution; and

(7) all of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt; the encumbrances existing thereon; all vouchers and securities relating thereto; and the value of such property, according to the best knowledge of the assignor.

History: **En. Sec. 4522, Civ. C. 1895; re-en. Sec. 6148, Rev. C. 1907; re-en. Sec. 8624, R.C.M. 1921; Cal. Civ. C. Sec. 3461; Field Civ. C. Sec. 1936; re-en. Sec. 8624, R.C.M. 1935; R.C.M. 1947, 18-313.**

Cross-References

Rules for determining residence, 1-1-215.

Property exempt from execution, Title 25, ch. 13, part 6.

Proceedings to determine availability of property for execution, Title 25, ch. 14, part 1.

Contracts — consideration, Title 28, ch. 2, part 8.

U.C.C. — validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

(2) (a) In case such assignor shall omit, neglect, or refuse to make and deliver such inventory within the 20 days required, the assignee named in such assignment shall, within 30 days after the date thereof, cause to be made and delivered to the judge of the district court of the county where such assignment is recorded such inventory as above required, insofar as he can.

(b) For such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess necessary to the proper making of such inventory.

(c) The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief.

(3) In case the assignee shall be unable to make and file such inventory within 30 days, the district judge may, upon application upon oath showing such inability, allow him such further time as shall be necessary, not exceeding 60 days.

(4) If the assignee fails to make and file such inventory within said 30 days or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal.

(5) The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is a contempt, and obedience to such order may be enforced by attachment.

(6) The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

History: En. Sec. 4523, Civ. C. 1895; re-en. Sec. 6149, Rev. C. 1907; re-en. Sec. 8625, R.C.M. 1921; Cal. Civ. C. Sec. 3462; re-en. Sec. 8625, R.C.M. 1935; R.C.M. 1947, 18-314.

Cross-References

Role and duties of county clerk, 7-4-2611.

Production and inspection of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure to proceedings on assignment, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Affidavits, Title 26, ch. 1, part 10.

31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

History: En. Sec. 4524, Civ. C. 1895; re-en. Sec. 6150, Rev. C. 1907; re-en. Sec. 8626, R.C.M. 1921; Cal. Civ. C. Sec. 3463; Based on Field Civ. C. Sec. 1938; re-en. Sec. 8626, R.C.M. 1935; R.C.M. 1947, 18-315.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of county clerk, 7-4-2611.

31-2-216. Recording and filing when more than one assignor. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded and a copy of the inventory required by 31-2-213 must be filed with the county clerk of the county in which any of the assignors resided at its date or in which any of them not then residing in this state then had a place of business.

History: En. Sec. 4525, Civ. C. 1895; re-en. Sec. 6151, Rev. C. 1907; re-en. Sec. 8627, R.C.M. 1921; Cal. Civ. C. Sec. 3464; Based on Field Civ. C. Sec. 1939; re-en. Sec. 8627, R.C.M. 1935; R.C.M. 1947, 18-316.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of county clerk, 7-4-2611.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

History: En. Sec. 4526, Civ. C. 1895; re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. 8628, R.C.M. 1921; Cal. Civ. C. Sec. 3465; Based on Field Civ. C. Sec. 1940; re-en. Sec. 8628, R.C.M. 1935; R.C.M. 1947, 18-317.

31-2-218. Assignment of real property. When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of this part, 70-21-102, and Title 70, chapter 21, part 3.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R.C.M. 1921; Cal. Civ. C. Sec. 3466; Field Civ. C. Sec. 1941; re-en. Sec. 8629, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1977; R.C.M. 1947, 18-318; amd. Sec. 4, Ch. 88, L. 1979.

31-2-219. Bond of assignees. Within 30 days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors, in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

History: En. Sec. 4528, Civ. C. 1895; re-en. Sec. 6154, Rev. C. 1907; re-en. Sec. 8630, R.C.M. 1921; Cal. Civ. C. Sec. 3467; Based on Field Civ. C. Sec. 1942; re-en. Sec. 8630, R.C.M. 1935; R.C.M. 1947, 18-319.

Cross-References

Role and duties of county clerk, 7-4-2611.

Suretyship, Title 28, ch. 11, part 4.

Surety insurance, Title 33, ch. 26, part 1.

31-2-220. Management, disposal, and conversion of estate. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) But in case the assignor shall fail to present such inventory within the 20 days required, then the assignee, before the 10 days shall have elapsed, may apply to said district judge by verified petition for leave to file a provisional bond until such time as he may be able to present the inventory as herein provided.

(3) The district judge shall, in the case provided in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than 5 days to the assignor, assignee, surety, and such other persons as such judge may prescribe:

(a) remove or discharge the assignee and appoint one or more in his place;

(b) order an accounting of the assignee so removed or discharged.

(4) The district judge may:

(a) enjoin said assignee from interfering with the assignor's estate and make provision by order for the safe custody of the same; and

(b) enforce obedience to such injunction and orders by attachment.

(5) Upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged.

(6) The new assignee shall give a bond, to be approved as required.

(7) The district judge shall have power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe; and

(c) enforce obedience to such orders by attachment.

History: En. Sec. 4529, Civ. C. 1895; re-en. Sec. 6155, Rev. C. 1907; amd. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8631, R.C.M. 1921; Cal. Civ. C. Sec. 3468; re-en. Sec. 8631, R.C.M. 1935; R.C.M. 1947, 18-320.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Suretyship, Title 28, ch. 11, part 4.

31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than 10 days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct. The last publication shall be at least 1 week prior to the date specified.

(2) Said verified claims of creditors shall set forth whether any and, if so, what securities are held for such claims and whether any and, if so, what payments have been made thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8632, R.C.M. 1921; re-en. Sec. 8632, R.C.M. 1935; R.C.M. 1947, 18-321.

Cross-References

Legal notice by publication, Title 18, ch. 7, part 2.

31-2-222. Notices to parties interested in the estate as creditors or otherwise. (1) Parties interested in the estate as creditors or parties otherwise interested, if the judge so directs, shall have at least 10 days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of:

(a) all proposed sales of property, in bulk;

(b) the filing of the final account of the assignee and of the hearing thereon;

(c) any proposed compromise with creditors.

(2) Such notice may be given as the judge shall direct and must be returnable in court, or before the judge of the court at chambers, in the district.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8633, R.C.M. 1921; re-en. Sec. 8633, R.C.M. 1935; R.C.M. 1947, 18-322.

Cross-References

U.C.C. — bulk transfers, Title 30, ch. 6.

31-2-223. Duties of assignee. It shall be the duty of the assignee to:

(1) collect and reduce to money the property of the estate and close up the estate as expeditiously as possible;

(2) sell the property of the estate as soon as practicable and sell the accounts and bills receivable when deemed advisable;

(3) furnish such information concerning the estate as may be requested by parties in interest;

(4) keep regular accounts and pay dividends as often as is compatible with the best interests of the estate;

(5) file a final report and account at least 10 days before the hearing thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8634, R.C.M. 1921; re-en. Sec. 8634, R.C.M. 1935; R.C.M. 1947, 18-323.

31-2-224. Power of court. The court shall have power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and his surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8635, R.C.M. 1921; re-en. Sec. 8635, R.C.M. 1935; R.C.M. 1947, 18-324; amd. Sec. 5, Ch. 88, L. 1979.

31-2-225. When further security required. The district judge may, upon his own motion or upon the application of any party in interest and on such notice as he may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

History: En. Sec. 4530, Civ. C. 1895; re-en. Sec. 6156, Rev. C. 1907; re-en. Sec. 8636, R.C.M. 1921; re-en. Sec. 8636, R.C.M. 1935; R.C.M. 1947, 18-325.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

31-2-226. Accounting of assignee. After 6 months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to make an accounting before the district court of the county where the accompanying inventory was filed.

History: En. Sec. 4531, Civ. C. 1895; re-en. Sec. 6157, Rev. C. 1907; re-en. Sec. 8637, R.C.M. 1921; Cal. Civ. C. Sec. 3469; Based on Field Civ. C. Sec. 1944; re-en. Sec. 8637, R.C.M. 1935; R.C.M. 1947, 18-326; amd. Sec. 6, Ch. 88, L. 1979.

31-2-227. Property exempt. Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

History: En. Sec. 4532, Civ. C. 1895; re-en. Sec. 6158, Rev. C. 1907; re-en. Sec. 8638, R.C.M. 1921; Cal. Civ. C. Sec. 3470; Field Civ. C. Sec. 1945; re-en. Sec. 8638, R.C.M. 1935; R.C.M. 1947, 18-327.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Life insurance, Title 33, ch. 20.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-228. Compensation. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more and may restrict the commissions to a lesser amount or deny them altogether.

History: En. Sec. 4533, Civ. C. 1895; re-en. Sec. 6159, Rev. C. 1907; re-en. Sec. 8639, R.C.M. 1921; Cal. Civ. C. Sec. 3471; Field Civ. C. Sec. 1946; re-en. Sec. 8639, R.C.M. 1935; R.C.M. 1947, 18-328.

Cross-References
Compensation of personal representative, 72-3-631.
Compensation of guardians, 72-5-432.

31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

History: En. Sec. 4534, Civ. C. 1895; re-en. Sec. 6160, Rev. C. 1907; re-en. Sec. 8640, R.C.M. 1921; Cal. Civ. C. Sec. 3472; Field Civ. C. Sec. 1947; re-en. Sec. 8640, R.C.M. 1935; R.C.M. 1947, 18-329.

Cross-References
U.C.C. — "good faith" defined, 30-1-201, 30-2-103.
U.C.C. — obligation of good faith, 30-1-203.

31-2-230. Assent of creditors necessary to modification of assignment. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee cannot afterwards be canceled or modified by the parties thereto without the consent of every creditor affected thereby.

History: En. Sec. 4535, Civ. C. 1895; re-en. Sec. 6161, Rev. C. 1907; re-en. Sec. 8641, R.C.M. 1921; Cal. Civ. C. Sec. 3473; Field Civ. C. Sec. 1948; re-en. Sec. 8641, R.C.M. 1935; R.C.M. 1947, 18-330.

Part 3

Fraudulent Conveyances

Part Cross-References
Claim and delivery of personal property, Title 27, ch. 17.
Defrauding creditors, 45-6-315.
Real property — fraudulent conveyances, Title 70, ch. 20, part 4.

31-2-301. Definitions. In this part, the following definitions apply:

(1) "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

(2) "Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property and the creation of any lien or encumbrance.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

(4) "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

History: En. Sec. 1, Ch. 126, L. 1945; R.C.M. 1947, 29-101.

Cross-References
U.C.C. — "creditor" defined, 30-1-201.
"Creditor" defined, 31-2-102.
Partnership — "conveyance" defined, 35-10-102.
Human rights — "creditor" defined, 49-2-101.

31-2-302. Insolvency defined. (1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate

assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors and the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

History: En. Sec. 2, Ch. 126, L. 1945; R.C.M. 1947, 29-102.

Cross-References

U.C.C. — "insolvent" defined, 30-1-201.

Insolvency — what constitutes, 31-2-202.

When bank insolvent, 32-1-503.

Nonprofit corporations — "insolvent" defined, 35-2-102.

Partnership — rules for distribution — payment priorities, 35-10-612.

31-2-303. Fair consideration defined. Fair consideration is given for property or obligation when:

(1) in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or an antecedent debt is satisfied; or

(2) such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property or obligation obtained.

History: En. Sec. 3, Ch. 126, L. 1945; R.C.M. 1947, 29-103.

Cross-References

Consideration, Title 28, ch. 2, part 8.

U.C.C. — "good faith" defined, 30-1-201, 30-2-103.

Transfer of property by recipient of old-age assistance presumed without fair consideration, 53-5-401.

31-2-304 through 31-2-310 reserved.

31-2-311. Conveyances by insolvent. Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

History: En. Sec. 4, Ch. 126, L. 1945; R.C.M. 1947, 29-104.

Cross-References

Instrument made with intent to defraud — void, 70-20-401.

31-2-312. Conveyances by persons in business. Every conveyance made without fair consideration, when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

History: En. Sec. 5, Ch. 126, L. 1945; R.C.M. 1947, 29-105.

Cross-References

U.C.C. — bulk transfers, Title 30, ch. 6.

Partnership — "conveyance" defined, 35-10-102.

Purchaser in good faith not affected, 70-20-404.

31-2-313. Conveyances by a person about to incur debts. Every conveyance made and every obligation incurred without fair consideration, when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

History: En. Sec. 6, Ch. 126, L. 1945; R.C.M. 1947, 29-106.

Cross-References

Consideration, Title 28, ch. 2, part 8.

Instrument made with intent to defraud — void, 70-20-401.

31-2-314. Conveyance made with intent to defraud. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors is fraudulent as to both present and future creditors.

History: En. Sec. 7, Ch. 126, L. 1945; R.C.M. 1947, 29-107.

Cross-References

What constitutes actual fraud, 28-2-405.

Defrauding creditors, 45-6-315.

Instrument made with intent to defraud — void, 70-20-401.

31-2-315. Certain transfers presumed fraudulent. Every transfer of personal property, other than a thing in action, and every lien thereon, other than a mortgage, when allowed by law, made by a person having at the time the possession or control of the property, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred is conclusively presumed to be fraudulent and therefore void against:

(1) those who are his creditors while he remains in possession;

(2) the successors in interest of such creditors;

(3) any persons on whom his estate devolves in trust for the benefit of others than himself; and

(4) purchasers or encumbrancers in good faith subsequent to the transfer.

History: En. Sec. 4491, Civ. C. 1895; re-en. Sec. 6128, Rev. C. 1907; re-en. Sec. 8604, R.C.M. 1921; Cal. Civ. C. Sec. 3440; Field Civ. C. Sec. 1919; re-en. Sec. 8604, R.C.M. 1935; amd. Sec. 5, Ch. 185, L. 1977; R.C.M. 1947, 29-208.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Defrauding creditors, 45-6-315.

Fraudulent conveyances, Title 70, ch. 20, part 4.

Purchaser in good faith not affected, 70-20-404.

31-2-316. Determination of fraud. In all cases arising under the provisions of 31-2-315 or 31-2-323, except as otherwise provided in 31-2-315, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

History: En. Sec. 4493, Civ. C. 1895; re-en. Sec. 6130, Rev. C. 1907; re-en. Sec. 8606, R.C.M. 1921; Cal. Civ. C. Sec. 3442; Field Civ. C. Sec. 1923; re-en. Sec. 8606, R.C.M. 1935; R.C.M. 1947, 29-210.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Consideration, Title 28, ch. 2, part 8.

31-2-317. Conveyance of partnership property. Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent is fraudulent as to partnership creditors if the conveyance is made or obligation is incurred:

(1) to a partner, whether with or without a promise by him to pay partnership debts; or

(2) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

History: **En. Sec. 8, Ch. 126, L. 1945; R.C.M. 1947, 29-108.**

Cross-References

Partnership property, 35-10-203.

Conveyance of real property of the partnership, 35-10-302.

Assignment of partner's interest, 35-10-504.

31-2-318 through 31-2-320 reserved.

31-2-321. Rights of creditors whose claims have matured. (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or mediately from such a purchaser:

(a) have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim; or

(b) disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

History: **En. Sec. 9, Ch. 126, L. 1945; R.C.M. 1947, 29-109.**

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Consideration, Title 28, ch. 2, part 8.

U.C.C. — "bona fide purchaser" defined, 30-8-302.

Purchaser in good faith not affected, 70-20-404.

31-2-322. Rights of creditors whose claims have not matured. (1) Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured, he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured.

(2) The court may:

(a) restrain the defendant from disposing of his property;

(b) appoint a receiver to take charge of the property;

(c) set aside the conveyance or annul the obligation; or

(d) make any order which the circumstances of the case may require.

History: **En. Sec. 10, Ch. 126, L. 1945; R.C.M. 1947, 29-110.**

Cross-References

When and by whom receiver appointed, 27-20-102.

31-2-323. Limitation on creditor's right. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement by legal process of his right to take the property affected by the transfer or obligation.

History: **En. Sec. 4492, Civ. C. 1895; re-en. Sec. 6129, Rev. C. 1907; re-en. Sec. 8605, R.C.M. 1921; Cal. Civ. C. Sec. 3441; Field Civ. C. Sec. 1922; re-en. Sec. 8605, R.C.M. 1935; R.C.M. 1947, 29-209.**

Cross-References
Prejudgment attachment, Title 27, ch. 18.

When party may rescind, 28-2-1711.

31-2-324. Cases not provided for. In any case not provided for in this part the rules of law and equity, including the law merchant and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause shall govern.

History: En. Sec. 11, Ch. 126, L. 1945; R.C.M. 1947, 29-111.

Cross-References
Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

When debtor may execute assignment, 31-2-201.

31-2-325. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 12, Ch. 126, L. 1945; R.C.M. 1947, 29-112.

CHAPTER 3

RELATED CREDIT PRACTICES

Part 1 — Consumer Reporting Agencies

Section
31-3-101. Purpose.
31-3-102. Definitions and rules of construction.
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31-3-111. Permissible purposes of reports.
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31-3-131. Requirements on users of consumer reports.
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31-3-151. Jurisdiction — venue.
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31-3-153. Violation.

Part 2 — Debt Adjusting

31-3-201. Definitions.

31-3-202. Debt adjusting prohibited — penalty.
31-3-203. Exemptions.

Part 1

Consumer Reporting Agencies

Part Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

31-3-101. Purpose. It is the purpose of this part to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this part. A further purpose of this part is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

History: En. 18-501 by Sec. 1, Ch. 547, L. 1975; R.C.M. 1947, 18-501.

31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit

information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

History: **En. 18-502 by Sec. 2, Ch. 547, L. 1975; R.C.M. 1947, 18-502.**

31-3-103. Credit rating — property right. A credit rating is a property right with full constitutional protection.

History: **En. 18-503 by Sec. 3, Ch. 547, L. 1975; R.C.M. 1947, 18-503.**

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

31-3-104 through 31-3-110 reserved.

31-3-111. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(b) intends to use the information for employment purposes;

(c) intends to use the information in connection with the underwriting of insurance involving the consumer;

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: En. 18-504 by Sec. 4, Ch. 547, L. 1975; R.C.M. 1947, 18-504.

Cross-References

Consumer protection — unlawful practices, 30-14-103.

Retail installment sales, Title 31, ch. 1, part 2.

Consumer loan businesses, Title 32, ch. 5.

Insurance, Title 33.

The employment relationship, Title 39, ch. 2.

31-3-112. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years;

(6) any other adverse item of information which antedates the report by more than 7 years.

History: En. 18-505 by Sec. 5, Ch. 547, L. 1975; R.C.M. 1947, 18-505.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Tax liens and limitations, Title 15, ch. 16, part 4.

31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and such disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the

consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

History: En. 18-506 by Sec. 6, Ch. 547, L. 1975; R.C.M. 1947, 18-506.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

The employment relationship, Title 39, ch. 2.

31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

History: En. 18-507 by Sec. 7, Ch. 547, L. 1975; R.C.M. 1947, 18-507.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Consumer Protection Act, Title 30, ch. 14, part 1.

31-3-115. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

History: En. 18-508 by Sec. 8, Ch. 547, L. 1975; R.C.M. 1947, 18-508.

31-3-116 through 31-3-120 reserved.

31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: **En. 18-509 by Sec. 9, Ch. 547, L. 1975; R.C.M. 1947, 18-509.**

31-3-122. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: **En. 18-510 by Sec. 10, Ch. 547, L. 1975; amd. Sec. 3, Ch. 185, L. 1977; R.C.M. 1947, 18-510.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Consumer Protection Act, Title 30, ch. 14, part 1.

31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to 31-3-122.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

History: **En. 18-511 by Sec. 11, Ch. 547, L. 1975; R.C.M. 1947, 18-511.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

31-3-124. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

History: En. 18-512 by Sec. 12, Ch. 547, L. 1975; R.C.M. 1947, 18-512.

31-3-125. Fees for disclosures to consumers. A consumer reporting agency shall make all disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of commerce in accordance with the Montana Administrative Procedure Act.

History: En. 18-513 by Sec. 13, Ch. 547, L. 1975; R.C.M. 1947, 18-513; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

31-3-126. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported.

History: En. 18-514 by Sec. 14, Ch. 547, L. 1975; R.C.M. 1947, 18-514.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records management, Title 2, ch. 6, part 2.

31-3-127. Consumer credit reports — use of child support obligation information. (1) For the purposes of this section, "child support agency" means the department of revenue or a public agency with whom the department has contracted to carry out any of the department's child support enforcement authority set forth in Title 40, chapter 5.

(2) A consumer reporting agency may request and receive from any child support agency personal or confidential information concerning an individual's overdue child support debt. However, if the debt is less than $1,000, the information regarding the amount may be made available only at the option of the child support agency. The child support agency shall charge the consumer reporting agency a fee, commensurate with the cost of providing the information.

(3) Prior to requesting the information, the consumer reporting agency must serve the individual with notice, either in person or by certified mail. The notice must state:

(a) the nature and substance of the information to be requested from the child support enforcement agency;

(b) the name and address of the child support agency;

(c) that the individual may inspect the child support debt records in person or obtain a copy by mail from the child support agency; and

(d) that if, within 30 days of service, the individual does not respond to the notice or otherwise initiate steps to contest the accuracy of the information under procedures established by the child support agency, the requested information will be forwarded to the consumer reporting agency for inclusion in the individual's investigative consumer report.

(4) Upon receipt of the request for information, together with proof of service of the notice in compliance with subsection (3), the child support agency must provide the appropriate information under this section to the consumer reporting agency. However, any debt amount that is in dispute may not be provided until the dispute has been determined by agreement or court or administrative decision. If the individual does not agree with the administrative decision, he is entitled to have a statement of dispute, as provided in 31-3-124, included in the information provided to the consumer reporting agency.

(5) The department of revenue shall adopt rules to implement this section, including rules establishing a procedure for contesting the accuracy of the information contained in the child support records of the child support agency and rules establishing a schedule of fees charged pursuant to subsection (2) of this section. The department shall adopt guidelines which take into account the payment record of the individual, the availability of other remedies, and other considerations which it determines relevant for determining whether use of the procedures provided in this section would carry out the purpose of enforcing payment of child support or would be appropriate in the circumstances. If after application of the guidelines to the request for information the department determines the procedures provided in this section are not appropriate, it may deny the request.

History: En. Sec. 1, Ch. 543, L. 1985.

Cross-References

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

Unauthorized disclosure of information obtained in Department of Revenue investigations a criminal act, 53-2-504.

31-3-128 through 31-3-130 reserved.

31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

History: En. 18-515 by Sec. 15, Ch. 547, L. 1975; amd. Sec. 4, Ch. 185, L. 1977; R.C.M. 1947, 18-515.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Consumer protection — unlawful practices, 30-14-103.

31-3-132 through 31-3-140 reserved.

31-3-141. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false or furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

History: En. 18-516 by Sec. 16, Ch. 547, L. 1975; R.C.M. 1947, 18-516.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Liability for negligence as well as willful acts, 27-1-701.

Defamation — how effected, 27-1-801.

31-3-142. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-517 by Sec. 17, Ch. 547, L. 1975; R.C.M. 1947, 18-517.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

31-3-143. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-518 by Sec. 18, Ch. 547, L. 1975; R.C.M. 1947, 18-518.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

31-3-144 through 31-3-150 reserved.

31-3-151. Jurisdiction — venue. A consumer may bring suit in any district court in Montana.

History: En. 18-519 by Sec. 19, Ch. 547, L. 1975; R.C.M. 1947, 18-519.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Venue, Title 25, ch. 2.

31-3-152. Rules. The department of commerce shall enforce this part, except 31-3-127, and promulgate rules necessary to carry out the intent of this part, except 31-3-127.

History: En. 18-520 by Sec. 20, Ch. 547, L. 1975; R.C.M. 1947, 18-520; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 543, L. 1985.

Compiler's Comments

1985 Amendment: In two places inserted exception clause referring to 31-3-127.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

31-3-153. Violation. For the purposes of this part, a violation of this law would be in violation of Title 30, chapter 14, part 1.

History: En. 18-521 by Sec. 21, Ch. 547, L. 1975; R.C.M. 1947, 18-521.

Cross-References

Damages, 30-14-133.

Penalties, 30-14-142.

Part 2

Debt Adjusting

31-3-201. Definitions. As used in this part, the following words and terms shall have the following meanings unless the context clearly requires a different meaning:

(1) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management, or debt-pooling service or the holding of oneself out by words of similar import as providing services to debtors in the management of their debts and contracting with the debtor for a fee to:

(a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; or

(b) receive from the debtor and disperse to his creditors any money or other thing of value.

(2) "Person" means an individual, corporation, partnership, trust, firm, association, or other legal entity.

History: En. Sec. 1, Ch. 300, L. 1969; R.C.M. 1947, 18-401.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Consideration, Title 28, ch. 2, part 8.

Wage brokers, Title 31, ch. 1, part 3.

31-3-202. Debt adjusting prohibited — penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than 6 months, or both.

History: En. Sec. 2, Ch. 300, L. 1969; R.C.M. 1947, 18-402.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

31-3-203. Exemptions. Section 31-3-202 shall not apply to:

(1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are 10% of the amounts as paid by the debtor;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts.

History: **En. Sec. 3, Ch. 300, L. 1969; amd. Sec. 2, Ch. 185, L. 1977; R.C.M. 1947, 18-403.**

TITLE 32

FINANCIAL INSTITUTIONS

Ch.
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2. Building and Loan Associations.
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BANKS AND TRUST COMPANIES

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Requirements of bank acting as depository for consolidated city and county government, 7-3-1316 through 7-3-1320.

Requirements of bank acting as depository for counties, cities, or towns, 7-6-201 through 7-6-208.

Special proceedings involving banks that are not subject to the Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20); 32-1-516; 32-1-532; 32-1-538.

Actions against banks — limitations, 27-2-213.

Insurance premium finance companies, Title 33, ch. 14.

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Part 1

General Provisions — Definitions

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-1-101. Short title — application. Parts 1 to 5, inclusive, of this chapter shall be known as the "Bank Act" and shall be applicable to all corporations and persons specified in 32-1-102 and to such other corporations as shall subject themselves to special provisions and sections thereof and to such other persons, partnerships, or corporations who shall by violating any of its provisions become subject to the penalties provided therein.

History: En. Sec. 1, Ch. 89, L. 1927; re-en. Sec. 6014.1, R.C.M. 1935; R.C.M. 1947, 5-101.

Cross-References

Penalty for transacting business without certificate, 32-1-403.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation which has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business,

whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, provided that nothing herein applies to or includes money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;
(b) savings banks;
(c) trust companies;
(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

History: En. Sec. 2, Ch. 89, L. 1927; re-en. Sec. 6014.2, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1977; R.C.M. 1947, 5-102.

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — "bank" defined, 30-1-201.

Definition of regulated lender, 31-1-111.

Consolidation or merger of banks, 32-1-371.

Penalty for transacting business without certificate, 32-1-403.

Dissolution, closing, and liquidation — "bank" defined, 32-1-561.

Permissible purposes for incorporation, 35-1-107.

32-1-103. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state and, for that purpose, may maintain offices in this state and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this chapter as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the department.

History: En. Sec. 31, Ch. 89, L. 1927; re-en. Sec. 6014.35, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-510.

Cross-References

Action against business association, 25-5-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Geographical restrictions on certain satellite terminals, 32-6-204.

Corporations — general powers, 35-1-108.

Foreign business corporations, Title 35, ch. 1, part 10.

Rural cooperative utilities — foreign corporations, 35-18-107.

32-1-104. Number of persons necessary to form corporation. Corporations may be formed by any number of natural persons not less than three under the laws of this state to conduct, as provided in this chapter and not otherwise, any one or more or all of the businesses mentioned in 32-1-102.

History: En. Sec. 3, Ch. 89, L. 1927; re-en. Sec. 6014.3, R.C.M. 1935; R.C.M. 1947, 5-103.

Cross-References

Incorporators, 35-1-201.

32-1-105. Commercial bank defined. The term "commercial bank" means any bank authorized by law to:

(1) receive deposits of money;
(2) deal in commercial paper or make loans thereon;
(3) lend money on real or personal property;
(4) sell credit life and disability insurance on loans to its borrowers;
(5) discount bills, notes, or other commercial papers; and
(6) buy and sell securities, gold and silver bullion, foreign coins, or bills of exchange.

History: En. Subd. a, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.4, R.C.M. 1935; R.C.M. 1947, 5-104; amd. Sec. 1, Ch. 129, L. 1981.

Compiler's Comments
1981 Amendment: Added subsection (4).

Cross-References
U.C.C. — "bank" defined, 30-1-201.
U.C.C. — commercial paper, Title 30, ch. 3.
Consolidation or merger of banks, 32-1-371.
Disability insurance, 33-1-207.
Life insurance, 33-1-208.

32-1-106. Savings bank defined. The term "savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may:
(1) loan and invest the funds thereof;
(2) receive deposits of money; loan, invest, and collect the same with interest; and repay depositors with or without interest;
(3) sell credit life and disability insurance on loans to its borrowers;
(4) invest said funds and moneys in such property, securities, and obligations as may be prescribed by this chapter; and
(5) declare and pay:
(a) dividends on its general deposits; and
(b) a stipulated rate of interest on deposits made for a stated period or upon special terms.

History: En. Subd. b, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.5, R.C.M. 1935; R.C.M. 1947, 5-105; amd. Sec. 2, Ch. 129, L. 1981.

Compiler's Comments
1981 Amendment: Added subsection (3).

Cross-References
U.C.C. — "bank" defined, 30-1-201.
Legal interest, 31-1-106.
Interest rate allowed by agreement, 31-1-107.
Consolidation or merger of banks, 32-1-371.
Investment of capital of savings banks, 32-1-421.
Disability insurance, 33-1-207.
Life insurance, 33-1-208.

32-1-107. Trust company defined — purposes for which may be formed. The term "trust company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:
(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest thereon as may be agreed upon;
(2) to accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;
(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute such

legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of such property and generally to have and exercise such powers as are usually had and exercised by trust companies;

(6) to act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a future date and to pledge its mortgages upon real estate and other securities as security therefor;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds;

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on said above-described securities; and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

History: En. Subd. c, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.6, R.C.M. 1935; amd. Sec. 18, Ch. 293, L. 1975; R.C.M. 1947, 5-106.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Business corporations, Title 35, ch. 1.

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Conveyance of trust property by court order, Title 72, ch. 22.

Trusts for benefit of third persons, Title 72, ch. 23.

Trusts in relation to real property, Title 72, ch. 24.

Miscellaneous provisions relating to trusts, Title 72, ch. 27.

32-1-108. Investment company defined — purposes for which may be formed. The term "investment company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest as may be agreed upon and to issue and sell its contracts or certificates of indebtedness, directly or through an agent or broker, bearing fixed rates of interest, in whole or in part, with participation or nonparticipation in the profits of the corporation and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates;

(2) to buy and sell government, state, county, municipal, and other bonds and all kinds of negotiable and nonnegotiable and commercial paper, stocks, and other investment securities;

(3) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on securities described in (2).

History: En. Subd. d, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.7, R.C.M. 1935; R.C.M. 1947, 5-107.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.
U.C.C. — investment securities, Title 30, ch. 8.
Legal interest, 31-1-106.
Interest rate allowed by agreement, 31-1-107.
Consolidation or merger of banks, 32-1-371.
Business corporations, Title 35, ch. 1.

32-1-109. Definitions. Unless the context requires otherwise the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

(2) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(3) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(4) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(7) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(8) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(9) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(10) "Undivided profits" means the credit balance of the profit and loss account of a bank.

History: **En. Sec. 5, Ch. 89, L. 1927; re-en. Sec. 6014.9, R.C.M. 1935; amd. Sec. 1, Ch. 431, L. 1975; R.C.M. 1947, 5-109; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 483, L. 1983; amd. Sec. 2, Ch. 75, L. 1985.**

Compiler's Comments

1985 Amendment: In (9) substituted "7 days" for "14 days".

1983 Amendment: In (9), substituted "14 days" for "30 days".

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (5).

Cross-References

Demand or time deposits, 32-1-445.

32-1-110. Punishment. When no other punishment is provided, a person willfully or knowingly violating parts 1 through 5 of this chapter is guilty of a misdemeanor. Upon information furnished by the department, the attorney general shall sue to enforce parts 1 through 5 of this chapter.

History: **En. Sec. 143, Ch. 89, L. 1927; re-en. Sec. 6014.153, R.C.M. 1935; amd. Sec. 61, Ch. 431, L. 1975; R.C.M. 1947, 5-1123.**

Cross-References

Attorney General — general duties, 2-15-501.

Penalty for transacting business without certificate, 32-1-403.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-111. Attachments prohibited. No property owned by any bank organized under the laws of the state of Montana shall be subject to attachment.

History: **En. Sec. 96, Ch. 89, L. 1927; re-en. Sec. 6014.107, R.C.M. 1935; R.C.M. 1947, 5-1023.**

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Part 2

Functions of State Banking Board and Department of Commerce

Part Cross-References

State Banking Board, 2-15-1803.

32-1-201. State banking board — secretary — meetings — per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board shall be legitimate charges of the department.

History: En. Sec. 3, Ch. 420, L. 1973; amd. Sec. 11, Ch. 71, L. 1977; amd. Sec. 2, Ch. 453, L. 1977; R.C.M. 1947, 5-609; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 6, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (7).

Chapter 474 substituted the first sentence of (7) for "The board members, except the chairman, shall be paid $25 a day or any part thereof devoted to the performance of their duties and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of their duties".

Cross-References

Powers and duties of Governor, 2-15-201.

32-1-202. Powers and duties of board. The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of the department of commerce as the duties and powers relate to banking.

History: En. Sec. 4, Ch. 420, L. 1973; amd. Sec. 22, Ch. 431, L. 1975; amd. Sec. 12, Ch. 71, L. 1977; R.C.M. 1947, 5-610; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2).

Cross-References

Board to refuse or approve application, 32-1-303.

Change of place of business and number of directors authorized, 32-1-353.

Consolidation or merger of banks, 32-1-371.

32-1-203. Rules adopted by board — new banks. The board shall adopt rules necessary for the administration of 32-1-201 through 32-1-206 in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973; amd. Sec. 23, Ch. 431, L. 1975; amd. Sec. 13, Ch. 71, L. 1977; R.C.M. 1947, 5-611.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-204. Hearings — notice. (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

History: En. Sec. 6, Ch. 420, L. 1973; amd. Sec. 24, Ch. 431, L. 1975; R.C.M. 1947, 5-612.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Change of place of business and number of directors authorized, 32-1-353.

Consolidation or merger of banks, 32-1-371.

32-1-205. Board rules for discovery and hearing procedures. (1) The board shall, under rules adopted by it, permit prehearing discovery procedures, including the taking of depositions and the production of documents. The rules of civil procedure for state courts shall furnish guidelines for such rules.

(2) In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973; R.C.M. 1947, 5-613; amd. Sec. 139, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "under rules adopted by it" in the first sentence of (1); substituted "The" for "In such discovery procedures, the" and substituted "such rules" for "these purposes" in the second sentence of (1); deleted "As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply" from the end of (1).

Cross-References

Officers who may administer oaths, 1-6-101.

Code of Ethics, Title 2, ch. 2, part 1.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

32-1-206. Disqualification of board member — when. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved, competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973; R.C.M. 1947, 5-614.

Cross-References

Sale of securities by officer to bank, 32-1-463.

Overdraft by officer or employee — receiving personal profit from loan, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer or director, 32-1-467.

32-1-207 through 32-1-210 reserved.

32-1-211. Examination and supervision by department. (1) The department shall exercise constant supervision over the books and affairs of all banks doing business in this state.

(2) It shall examine, at least once a year, each of those banks and verify the assets and liabilities of each and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books.

(3) It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) It may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business thereof.

(5) It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property it desires to inspect, and in all things aid it in the performance of its duty.

History: En. Sec. 71, Ch. 89, L. 1927; re-en. Sec. 6014.75, R.C.M. 1935; amd. Sec. 30, Ch. 431, L. 1975; R.C.M. 1947, 5-901.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Consumer protection — department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

Penalty for transacting business without certificate, 32-1-403.

Examination by the corporation — when accepted, 32-1-605.

Building and loan associations — Department of Commerce responsibility, Title 32, ch. 2, part 3.

Credit unions — examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

32-1-212. Director and employees not to be interested in banks. Neither the director of the department of commerce nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly.

History: En. Sec. 58, Ch. 89, L. 1927; re-en. Sec. 6014.62, R.C.M. 1935; amd. Sec. 20, Ch. 431, L. 1975; amd. Sec. 10, Ch. 71, L. 1977; R.C.M. 1947, 5-604; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Public employees — Code of Ethics, Title 2, ch. 2, part 1.

32-1-213. Payments to be made by banks, investment companies, and trust companies. (1) On or before January 31 and July 31 of each year, each bank, trust company, or investment company under the supervision of the department shall pay to the department a semiannual assessment fee. The fees shall be set to recover all of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department shall establish such assessment fee by rule on or before June 1 of each year. The funds so collected shall be deposited in the state special revenue fund for the use of the department in its examination function.

(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.82, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-908; amd. Sec. 1, Ch. 289, L. 1979; amd. Sec. 1, Ch. 507, L. 1983; amd. Sec. 1, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in second sentence substituted "all of the costs" for "80% of the costs"; and at end of (1) and (2) substituted "the state special revenue fund for the use of the department in its examination function" for "the general fund".

1983 Amendment: Substituted (1) and (2) for former section, which read: "For the credit of the general fund of the state, each bank, trust company, or investment company under the supervision of the department shall pay to the state treasurer, on or before June 30 of each year, a supervision fee of $400. An examination fee of 12 cents for each $1,000 of total assets as of the date of the examination shall be paid at the conclusion of the examination."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-1-214. Special examination defined. A special examination is an examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination or an examination made at the request of the board of directors or stockholders of a bank.

History: En. Sec. 92, Ch. 89, L. 1927; re-en. Sec. 6014.103, R.C.M. 1935; amd. Sec. 35, Ch. 431, L. 1975; amd. Sec. 18, Ch. 71, L. 1977; R.C.M. 1947, 5-1019.

Cross-References

Examinations by the corporation — when accepted, 32-1-605.

Building and loan associations — examinations by department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-215. Special examinations and fees. Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at the rate of $100 a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 2, Ch. 167, L. 1929; re-en. Sec. 6014.84, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147,

L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971; amd. Sec. 31, Ch. 431, L. 1975; R.C.M. 1947, 5-910; amd. Sec. 2, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: At end of section, after "credit of", substituted "the state special revenue fund for the use of the department in its examination function" for "the general fund".

Cross-References

Building and loan associations — examinations by department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-216. Examination at request of directors. When requested in writing, upon the authority of a majority of the board of directors of any bank, to make an examination of such bank, the department shall do so.

History: En. Sec. 93, Ch. 89, L. 1927; re-en. Sec. 6014.104, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1020.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-217. Department to examine trusts. It shall be the duty of the department as a part of the examination of trust companies and banks to check all trusts, trust funds, and trust and estate accounts held in the possession and control of the bank or trust company.

History: En. Sec. 98, Ch. 89, L. 1927; re-en. Sec. 6014.109, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1025.

Cross-References

Trusts in general, Title 72, ch. 20.

32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves.

History: (1)En. Sec. 100, Ch. 89, L. 1927; re-en. Sec. 6014.111, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 20, Ch. 71, L. 1977; Sec. 5-1027, R.C.M. 1947; (2)En. Sec. 91, Ch. 89, L. 1927; re-en. Sec. 6014.102, R.C.M. 1935; amd. Sec. 34, Ch. 431, L. 1975; Sec. 5-1018, R.C.M. 1947; R.C.M. 1947, 5-1018, 5-1027.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-1-219 through 32-1-230 reserved.

32-1-231. Reports to department of commerce. (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report shall be transmitted to the department within 30 days after the receipt of a request or requisition for it and in a form the department may require. It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.

History: **En. Secs. 61, 64, Ch. 89, L. 1927; re-en. Secs. 6014.65, 6014.68, R.C.M. 1935; amd. Secs. 25, 170, Ch. 431, L. 1975; R.C.M. 1947, 5-701, 5-704; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 186, L. 1985.**

Compiler's Comments

1985 Amendment: In (4) increased time limit for submission by banks of call reports from 5 to 30 days.

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Building and loan associations — reports and accounts prescribed by department, 32-2-302.

Building and loan associations — reports of condition — contents — publication, 32-2-303.

Credit unions — reports, 32-3-202.

32-1-232. Report of declaration of dividend. In addition to the report required by 32-1-231, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 32-1-231.

History: **En. Sec. 62, Ch. 89, L. 1927; re-en. Sec. 6014.66, R.C.M. 1935; amd. Sec. 26, Ch. 431, L. 1975; amd. Sec. 14, Ch. 71, L. 1977; R.C.M. 1947, 5-702.**

Cross-References

Dividends, surplus, losses, and bad debts, 32-1-452.

Corporations — distributions to shareholders, 35-1-711.

32-1-233. Special reports to department. In addition to the information obtained from the report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and shall be punished accordingly.

History: **En. Sec. 63, Ch. 89, L. 1927; re-en. Sec. 6014.67, R.C.M. 1935; amd. Sec. 27, Ch. 431, L. 1975; R.C.M. 1947, 5-703.**

Cross-References

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

32-1-234. Confidentiality — penalties. (1) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in them shall be used by the department only in the furtherance of its official duties. The department may exchange information with federal banking departments and with departments of other states and furnish information to the legislative auditor or prosecuting officials who request it for use in pursuit of official duties.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this subsection, be imparted to any person not officially associated with the department. The information shall be used by the department only in the furtherance of its official duties, except that the department may exchange information with the federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank shall be removed from office and is also guilty of a felony. Upon conviction he shall be fined not exceeding $1,000 or imprisoned in the state penitentiary not exceeding 5 years or both fined and imprisoned.

History: En. Secs. 65, 85, Ch. 89, L. 1927; re-en. Secs. 6014.69, 6014.96, R.C.M. 1935; amd. Secs. 28, 33, Ch. 431, L. 1975; R.C.M. 1947, 5-705, 5-1012.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-235. Penalty for failure to make report within thirty days. If any bank neglects to make out or transmit the statements required by this chapter within 30 days after call, it shall be subject to a penalty of $20 for each day in default after the period respectively required by this chapter that it may delay to make and transmit any such statements. Should any bank delay for a period of 1 month to make out and transmit the statements and proofs of publication required by this chapter beyond the period when the same is required to be made or willfully violate any of the provisions of this chapter with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

History: En. Sec. 66, Ch. 89, L. 1927; re-en. Sec. 6014.70, R.C.M. 1935; R.C.M. 1947, 5-706; amd. Sec. 2, Ch. 186, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning increased time limit for submission by banks of call reports from 5 to 30 days.

Cross-References

Corporations — liability of directors in certain cases, 35-1-409.

32-1-236. False statements and entries considered felony. Every officer or other person authorized by this chapter who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this chapter to make statements or reports who willfully and knowingly subscribes or makes any false statement or report is guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 or more than 10 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 67, Ch. 89, L. 1927; re-en. Sec. 6014.71, R.C.M. 1935; amd. Sec. 15, Ch. 71, L. 1977; R.C.M. 1947, 5-707; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Felony charges — suspension or prohibition, 32-1-908.

Corporations — penalty imposed upon officers and directors for signing false document, 35-1-412.

Part 3

Formation and Reorganization

Part Cross-References

Banks subject to corporation license tax, 15-31-101.

U.C.C. — investment securities, Title 30, ch. 8.

32-1-301. Organization and incorporation — articles of agreement. Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth:

(1) the corporate name of the proposed corporation, which shall not be the name of any other corporation theretofore granted and then doing business of a similar character in this state or any imitation of such name, provided that it shall be lawful to use the name theretofore used by any corporation previously incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and entirely out of business. No banking corporation hereafter organized shall adopt or

use the name of any other banking corporation or association, or of any friendly association.

(2) the name of the city or town and county in which the principal office of the corporation is to be located;

(3) the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of such shares; the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business;

(4) the names and places of residence of the several shareholders and the number of shares subscribed by each;

(5) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

(6) the purpose for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage.

History: Ap. p. Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1965; Sec. 5-201, R.C.M. 1947; Ap. p. Sec. 2661, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; Sec. 93-100-2, R.C.M. 1947; R.C.M. 1947, 5-201, 93-100-2(part); amd. Sec. 1, Ch. 179, L. 1985.

Compiler's Comments

1985 Amendment: In (5) after "annual meeting" and after "not exceeding two", deleted "within the limits specified in this chapter".

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Certificate of authenticity of Justice's Court's certificate of acknowledgment, 3-1-405.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Number of persons necessary to form corporation, 32-1-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Penalty for transacting business without certificate, 32-1-403.

Organization of subsidiary trust companies, 32-1-803.

Business corporations, Title 35, ch. 1.

32-1-302. Incorporation. (1) The proposed articles of agreement shall be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement.

(2) Upon the presentation of the proposed articles of agreement, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by

this chapter. It shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 2, Ch. 431, L. 1975; R.C.M. 1947, 5-202; amd. Sec. 1, Ch. 79, L. 1979.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Powers and duties of State Banking Board, 32-1-202.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Business corporations — permissible purposes for incorporation, 35-1-107.

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-303. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with 32-1-202 through 32-1-206.

History: En. 5-202.1 by Sec. 3, Ch. 431, L. 1975; amd. Sec. 2, Ch. 71, L. 1977; R.C.M. 1947, 5-202.1.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

32-1-304. Repealed. Sec. 2, Ch. 79, L. 1979.

History: En. Sec. 7, Ch. 89, L. 1927; re-en. Sec. 6014.11, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-205.

32-1-305. Filing of certificate and articles of agreement. The articles of agreement, together with one of the certificates of authorization issued by the department, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. A certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that the corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. This certificate shall be taken by all courts of this state as evidence of the corporate existence of the bank. The persons signing and acknowledging the articles of agreement and their associates and successors are then a body corporate with power of continual succession and by that name they and their successors are entitled to have, possess, and enjoy all the rights and privileges conferred by this chapter.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 4, Ch. 431, L. 1975; R.C.M. 1947, 5-203.

Cross-References

Evidence — public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Business corporations — articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Business corporations — effect of issuance of certificate of incorporation, 35-1-204.

32-1-306. Continual succession of banks. Any bank, trust company, or investment company now existing may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given by filing its intention to do so in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state and by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this chapter and paying the legal filing fees as in such cases otherwise provided.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; R.C.M. 1947, 5-204.

Cross-References

Business corporations — general powers, 35-1-108.

32-1-307. Amount of capital. (1) The amount of the common and preferred stock of a commercial bank shall not be less than $25,000, and in addition thereto there shall be created a surplus of not less than 10% of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the department for the certificate of authorization hereinabove mentioned.

(2) A commercial bank having its place of business in a city or town of more than 2,000 and less than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $30,000 and a surplus of 10% of the capital stock as hereinbefore provided. A commercial bank having its place of business in a city or town of more than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $50,000 and a surplus of 10% of the capital stock as hereinbefore provided.

(3) The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement and shall be not less than $100,000 or more than $10 million, of which amount at least $100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of $100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; re-en. Sec. 6014.12, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-206.

Cross-References

Business corporations — shares, Title 35, ch. 1, part 6.

32-1-308. Bylaws. (1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:

(a) the time, place, and manner of calling and conducting the meetings of the corporation;

(b) the number of stockholders constituting a quorum;

(c) the mode of voting by proxy;

(d) the time of the annual election of directors and the mode and manner of giving notice thereof;

(e) the duties of officers;

(f) the manner of election and the tenure of office of all officers other than the directors;

(g) suitable penalties for violation of bylaws, not exceeding in any case $100 for any one offense.

(2) The bylaws adopted must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws, which book shall be open to the inspection of the public during the office hours of each day except holidays. A copy of the bylaws shall also be transmitted to the department. The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.

History: **En. Sec. 13, Ch. 89, L. 1927; re-en. Sec. 6014.17, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-211.**

Cross-References

Bylaws regarding banking hours and business days, 32-1-484.

Business corporations — bylaws — power in directors — contents, 35-1-214.

Business corporations — number, election, and term of directors, 35-1-402.

32-1-309 through 32-1-320 reserved.

32-1-321. Calling of first meeting — cancellation of certificate. When the formation of the corporation is completed under the provisions of this chapter by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located at least 5 days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within 30 days from the date of the certificate of incorporation or if such corporation shall fail to commence the business for which it is incorporated within 90 days from the date of the issuance of the certificate of authorization, the department is authorized to cancel such certificate of authorization.

History: **En. Sec. 9, Ch. 89, L. 1927; re-en. Sec. 6014.13, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-207.**

Cross-References

Powers and duties of State Banking Board, 32-1-202.

32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than three in number, all of whom shall be stockholders as required by 32-1-324 and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any business day before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock as required by 32-1-324. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board and the directors so appointed shall hold office until the next annual election.

History: En. Sec. 10, Ch. 89, L. 1927; re-en. Sec. 6014.14, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1957; amd. Sec. 5, Ch. 431, L. 1975; R.C.M. 1947, 5-208; amd. Sec. 1, Ch. 84, L. 1979; amd. Sec. 1, Ch. 341, L. 1981; amd. Sec. 1, Ch. 561, L. 1983; amd. Sec. 2, Ch. 179, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "not less than", substituted "three" for "3 or more than 11" and after "stockholders", substituted "as required by 32-1-324" for "of the bank"; and near end of (2) substituted "as required by 32-1-324" for "in the bank standing in his name on the books of the bank".

1983 Amendment: In (2), changed annual meeting date from "any Tuesday up to and including the second Tuesday in April" to "any business day before April 15".

1981 Amendment: Deleted "and citizens of the United States" after "stockholders of the bank" in (1).

Cross-References

Officers who may administer oaths, 1-6-101.

Persons previously convicted under banking laws — bank employment, 32-1-462.

Building and loan associations — directors and officers, 32-2-206.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-1-323. Elections — how conducted. (1) All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal or to distribute them on the same principle among as many candidates as he shall think fit.

(2) The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor or of a person of unsound mind may be represented and voted by his guardian and of a

deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company.

(3) The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if for any reason there is not a quorum present or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting.

(4) All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

Cross-References

Business corporations — quorum of directors — voting requirements, 35-1-405.

Business corporations — closing of transfer books and fixing record date, 35-1-503.

Business corporations — voting list, 35-1-504.

Business corporations — voting of shares, 35-1-506.

Business corporations — articles to control as to shareholder voting requirements, 35-1-507.

Business corporations — voting trust — inspection of agreement, 35-1-508.

32-1-324. Director's shares of stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank or the owning bank holding company as defined in the federal Bank Holding Company Act of 1956, as that act reads on October 1, 1985, owning in his own right shares thereof of the par value of at least $1,000, and every person elected to be a director, who after such election shall cease to be the owner in his own right of the amount of such stock aforesaid or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the department of such sale or hypothecation, and such director may be removed from the office of director by the department, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the department.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209; amd. Sec. 3, Ch. 179, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence inserted "or the owning bank holding company as defined in the federal Bank Holding Company Act of 1956, as that act reads on October 1, 1985".

Cross-References

Sale of securities by officer to bank, 32-1-463.

Removal of directors, officers, or employees, 32-1-468.

Organization of subsidiary trust companies, 32-1-803.

Business corporations — board of directors, 35-1-401.

32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank and fix their compensation. The president shall be chosen from the board of directors.

(3) The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute book shall be kept in the office of the bank at all times and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 89, L. 1927; re-en. Sec. 6014.16, R.C.M. 1935; amd. Sec. 6, Ch. 431, L. 1975; R.C.M. 1947, 5-210; amd. Sec. 1, Ch. 264, L. 1983; amd. Sec. 4, Ch. 179, L. 1985.

Compiler's Comments

1985 Amendment: In (1) changed "once a month" to "quarterly".

1983 Amendment: In last sentence of (2), deleted "and at least one vice-president" before "shall be chosen from the board of directors".

Cross-References

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Organization of subsidiary trust companies, 32-1-803.

Business corporations — place and notice of directors' meetings, 35-1-404.

Business corporations — officers — appointment — powers and duties, 35-1-410.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-326 through 32-1-330 reserved.

32-1-331. Keeping list of stockholders. Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof and for their use, a book containing a list of stockholders in such corporation and the number of shares of stock held by each.

History: En. Sec. 33, Ch. 89, L. 1927; re-en. Sec. 6014.37, R.C.M. 1935; R.C.M. 1947, 5-512.

Cross-References

Business corporations — voting list, 35-1-504.

32-1-332. Transfer of stock. The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the corporation or a new certificate issued to the person to whom it has been transferred.

History: En. Sec. 22, Ch. 89, L. 1927; re-en. Sec. 6014.26, R.C.M. 1935; R.C.M. 1947, 5-501.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

32-1-333. Stockholders' liability — effect of insolvency on transfers of stock. (1) The stockholders of every bank shall be severally and individually liable, equally and ratably and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee and no person holding such stock as a pledge or collateral security shall be personally subject to any liability as stockholders in such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, intestate, ward, or the person interested in such trust fund would have been liable if he had been living or competent to act and hold the stock in his own name.

(2) The stockholders in any bank who shall have transferred their shares or registered the transfer thereof within 6 months before the failure of said bank to meet its obligations or with knowledge of such impending failure shall be liable to the same extent as if they had made no such transfer to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way recourse which such stockholder might otherwise have against those in whose name such shares are registered at the time of such failure.

History: **En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-401.**

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Assessment on capital stock to make good impairment, 32-1-506.

Further duties of liquidating officer, 32-1-552.

Business corporations — liability of subscribers and shareholders, 35-1-510.

32-1-334. Waiver of stockholders' liability. No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this chapter is in any manner waived, and if any such contract shall be so made, such contract shall be void.

History: **En. Sec. 42, Ch. 89, L. 1927; re-en. Sec. 6014.46, R.C.M. 1935; R.C.M. 1947, 5-521.**

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

32-1-335. Purchase or loan of own capital stock prohibited. No bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: **En. Sec. 36, Ch. 89, L. 1927; re-en. Sec. 6014.40, R.C.M. 1935; R.C.M. 1947, 5-515.**

Cross-References

Restriction on investment in corporate stock, 32-1-422.

Purchase of obligation of bank by officer, 32-1-466.

Business corporations — right of corporation to acquire and dispose of its own shares — restrictions, 35-1-612.

32-1-336. Nonassessable preferred stock — authorization for issuing. Any domestic commercial bank, savings bank, trust company, or investment company may amend its articles of incorporation or articles of agreement by providing for the issuance of nonassessable preferred stock, and any such bank or company hereafter formed may provide in its articles for the issuance of such stock. Such amendment may be made by the adoption of a resolution by a vote of persons holding a majority of the stock of such corporation at a meeting held after 30 days' notice stating the purpose and the time and place of holding such meeting, either mailed or published in the manner provided in 32-1-354, and by filing a certified copy of such resolution in the office of the county clerk and recorder of the county in which the principal place of business is located and a certified copy thereof in the office of the secretary of state, certified and authenticated as provided in 32-1-355.

History: **En. Sec. 1, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.1, R.C.M. 1935; R.C.M. 1947, 5-1127.**

Cross-References

Business corporations — procedure to amend articles of incorporation, 35-1-207.

Business corporations — issuance of shares of preferred or special classes in series — filing of statement, 35-1-602.

32-1-337. Preferred stock not subject to double liability or other responsibility. Such preferred stock shall not impose any double liability upon the subscriber or holder or subject the holder to responsibility for any contract, debt, or engagement of the issuing corporation.

History: **En. Sec. 2, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.2, R.C.M. 1935; R.C.M. 1947, 5-1128.**

Cross-References

Business corporations — liability of subscribers and shareholders, 35-1-510.

32-1-338. Manner of issuing preferred stock. The preferred stock may be issued and sold upon terms and conditions approved by the department or required for the purchase of the stock by an agency or quasi-agency of the federal government.

History: **En. Sec. 3, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.3, R.C.M. 1935; amd. Sec. 63, Ch. 431, L. 1975; R.C.M. 1947, 5-1129.**

Cross-References

Business corporations — issuance of shares of preferred or special classes in series — filing of statement, 35-1-602.

32-1-339. Right of examination by stockholder. No stockholder of any bank incorporated under the laws of this state who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers, but any such stockholder shall have the right to inspect during business hours the general statement book showing the general assets and liabilities of such bank.

History: **En. Sec. 108, Ch. 89, L. 1927; re-en. Sec. 6014.119, R.C.M. 1935; R.C.M. 1947, 5-1035.**

Cross-References

Examination and supervision by department, 32-1-211.

Business corporations — records — shareholder inspection rights, 35-1-513.

32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the vote of two-thirds of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus, and undivided profits are not reduced by the issuance of the new stock.

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. Its action shall be final, and written notice of it shall be given to the bank.

(6) If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective.

History: En. Sec. 97, Ch. 89, L. 1927; re-en. Sec. 6014.108, R.C.M. 1935; amd. Sec. 36, Ch. 431, L. 1975; R.C.M. 1947, 5-1024.

Cross-References

Examination and supervision by department, 32-1-211.

Dividends, surplus, losses, and bad debts, 32-1-452.

Calculation of profits, 32-1-453.

32-1-341 through 32-1-350 reserved.

32-1-351. Increase or diminution of capital stock. Any bank now organized and existing and which may hereafter be organized may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for its purposes within the limits prescribed by this chapter.

History: En. Sec. 14, Ch. 89, L. 1927; re-en. Sec. 6014.18, R.C.M. 1935; R.C.M. 1947, 5-212.

Cross-References

Organization of subsidiary trust companies, 32-1-803.

32-1-352. Change of corporate name authorized. The corporate name of any bank now organized and existing or which may hereafter be organized may be altered, changed, or amended as in this part provided.

History: En. Sec. 15, Ch. 89, L. 1927; re-en. Sec. 6014.19, R.C.M. 1935; R.C.M. 1947, 5-213.

Cross-References

Amendment to registration of assumed business name, 30-13-209.

Business corporations — corporate name, 35-1-301.

32-1-353. Change of place of business and number of directors authorized. A bank may, upon approval of the board, change its principal place of business from one place to another in the same county or in an adjacent county within this state and may increase or diminish the number of trustees or directors in the manner provided in 32-1-354 through 32-1-356.

History: En. Sec. 16, Ch. 89, L. 1927; re-en. Sec. 6014.20, R.C.M. 1935; amd. Sec. 7, Ch. 431, L. 1975; R.C.M. 1947, 5-214.

Cross-References

Amendment to registration of assumed business name, 30-13-209.

Business corporations — change of registered office or registered agent, 35-1-306.

Business corporations — number, election, and term of directors, 35-1-402.

32-1-354. Procedure for changes. Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock or for changing its corporate name or for changing its principal place of business, it shall be the duty of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, for 6 successive weeks and to deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence, at least 6 weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital or the name to which it is proposed that the bank shall be changed or to the new location or place to which the principal place of business shall be changed, and a vote of at least two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock or to change its corporate name or to change its principal place of business.

History: En. Sec. 17, Ch. 89, L. 1927; re-en. Sec. 6014.21, R.C.M. 1935; R.C.M. 1947, 5-215.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Amendment to registration of assumed business name, 30-13-209.

Hearings — notice, 32-1-204.

Business corporations — change of registered office or registered agent, 35-1-306.

Business corporations — notice of shareholders' meetings, 35-1-502.

Business corporations — voting of shares — proxies, 35-1-506.

32-1-355. Certificate of proceedings — contents and effect. If, at the time and place specified in the notice provided for in 32-1-354, stockholders appear in person or by proxy representing not less than two-thirds of all the shares of stock of the corporation and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary and proceed to a vote of those present in person or by proxy and if two-thirds of the votes representing all the outstanding capital stock have been cast in favor of increasing or diminishing the amount of capital stock or of changing its corporate name or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation or the change in the principal place of business shall be made out, signed, and verified by the affidavit of the chairman and be countersigned by the secretary, and the certificate shall be acknowledged by the chairman. The certificate shall then be sent to the department which shall within 30 days of receipt either approve or reject the application for change. The action of the department on the application is final. If it approves the certificate, it shall notify the bank, at which time the certificate shall be filed in the office of the county clerk and recorder of the county in which the bank is located and in the office of the secretary of state. Upon the filing, the change is effective.

History: En. Sec. 18, Ch. 89, L. 1927; re-en. Sec. 6014.22, R.C.M. 1935; amd. Sec. 8, Ch. 431, L. 1975; R.C.M. 1947, 5-216.

Cross-References

Examination and supervision by Department, 32-1-211.

Business corporations — voting of shares — proxies, 35-1-506.

32-1-356. Procedure for change in number of directors. (1) A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. However, the number of directors may not at any time be less than three.

(2) When a bank or trust company decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of the meeting must be deposited in the post office, addressed to each stockholder of record entitled to vote at the meeting under the articles of incorporation or amendments to them and the laws and constitution of Montana at his last known place of residence, at least 10 days previous to the date set for the holding of the meeting. In addition, the notice must be published once a week for 2 consecutive weeks in a newspaper published in the county where the principal place of business of the corporation is situated. If no newspaper is published in the county, it is not necessary to publish the notice. However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If, at the time and place specified in the notice of the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation appear in person or by proxy and vote in favor of the amendment, a certificate of the proceedings showing a compliance of the provisions of this chapter and the amendment relative to the number of directors shall be prepared, certified, and sworn to and filed with the department. The department shall, within 30 days after the receipt of the certificate, either approve or reject the amendment. The action of the department on the amendment is final. If it approves the amendment, it shall notify the bank, whereupon the certificate with the department's approval attached to it shall be filed in the office of the county clerk and

recorder of the county in which the bank is situated and a certified copy of it shall be filed in the office of the secretary of state. Upon the filing of the certified copy with the secretary of state, the amendment becomes effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; re-en. Sec. 6014.23, R.C.M. 1935; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965; amd. Sec. 9, Ch. 431, L. 1975; R.C.M. 1947, 5-217; amd. Sec. 5, Ch. 179, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "annual meeting" and after "not exceeding two", deleted "within the limits specified in this chapter", and at end substituted "three" for "3 or more than 11".

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Organization of subsidiary trust companies, 32-1-803.

Business corporations — procedure to amend articles of incorporation, 35-1-207.

Business corporations — number, election, and term of directors, 35-1-402.

Business corporations — voting of shares — proxies, 35-1-506.

32-1-357 through 32-1-360 reserved.

32-1-361. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when stockholders owning two-thirds of the stock of the bank have voted to become such corporation or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States or when a majority of the directors of the bank, having been authorized in their discretion to make the change, shall, by a vote of the majority, decide to become such corporation. The cashier of the bank shall publish notice thereof for 30 days in the newspaper which the directors select and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders and notify the department that the bank has decided to become a corporation under the laws of the United States.

History: En. Sec. 75, Ch. 89, L. 1927; re-en. Sec. 6014.86, R.C.M. 1935; amd. Sec. 32, Ch. 431, L. 1975; amd. Sec. 17, Ch. 71, L. 1977; R.C.M. 1947, 5-1002.

32-1-362. National bank powers extended to state banks. (1) With the consent of the department, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that, subject to subsection (2), such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

(2) If the United States congress allows national banks to establish branches without regard to state prohibitions, a bank organized under the laws of Montana may, with the consent of the department, establish a branch under the same conditions allowed national banks, despite the restrictions imposed by 32-1-372.

History: En. Sec. 1, Ch. 119, L. 1973; R.C.M. 1947, 5-1002.1; amd. Sec. 1, Ch. 163, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "subject to subsection (2)" before "such regulations and powers shall not apply" in (1); added subsection (2).

Cross-References

Authorized activities of credit unions, 32-3-206.

32-1-363. Surrender of charter by state bank. (1) Any bank which will become a corporation for carrying on the business of banking under the laws of the United States shall cease to be a corporation under the laws of this state, except that for the term of 3 years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it and of enabling it to close its concerns and to dispose of and convey its property.

(2) The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect such organization by signing the articles of association and the organization certificate and adopting such regulations as may be just and proper and not inconsistent with the acts of congress in relation thereto.

(3) Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

History: En. Sec. 76, Ch. 89, L. 1927; re-en. Sec. 6014.87, R.C.M. 1935; R.C.M. 1947, 5-1003.

Cross-References

Corporation license or income tax — banks and savings and loan associations, Title 15, ch. 31, part 7.

Business corporations — survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

32-1-364. Increase or reduction of capital stock. The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders or may retain such portion of such surplus as they may deem necessary. In case of an increase of the capital stock under the provisions of the acts of congress, the directors may charge the shares of such increased capital stock with a like amount to place the whole of such capital stock on an equality and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto and as are provided in their articles of association and the acts of congress. New directors may be chosen at such time and in the manner provided in the articles of association and the acts of congress.

History: En. Sec. 77, Ch. 89, L. 1927; re-en. Sec. 6014.88, R.C.M. 1935; R.C.M. 1947, 5-1004.

32-1-365. Certificate of change to national bank. (1) When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States.

(2) When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the national bank corporation into which such bank shall have been converted.

History: En. Sec. 78, Ch. 89, L. 1927; re-en. Sec. 6014.89, R.C.M. 1935; R.C.M. 1947, 5-1005.

32-1-366 through 32-1-370 reserved.

32-1-371. Consolidation or merger of banks. (1) The words "bank" or "banks" as used in this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) Any two or more banks doing business in this state may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Such consolidation or merger, before it becomes effective, must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, provided that the capital stock of such consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(3) Upon such consolidation or merger, the corporate franchise, corporate life, being, and existence and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of such consolidating or merging bank and banks shall, without the necessity of any instrument of transfer, become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank, and such bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to such consolidation or merger and by which will or instrument such consolidating or merging bank was nominated by the maker to such office.

History: En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931; re-en. Sec. 6014.105, R.C.M. 1935; amd. Sec. 171, Ch. 431, L. 1975; amd. Sec. 19, Ch. 71, L. 1977; R.C.M. 1947, 5-1021.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

Hearings — notice, 32-1-204.

Business corporations — merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

32-1-372. Branch bank prohibited — exceptions. (1) No bank may maintain any branch bank, receive deposits, or pay checks except over the counter of and in its own banking house, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. The distance of the facility from the main banking house may not exceed 1,000 feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to

the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house.

(3) (a) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(b) A satellite terminal other than a point-of-sale terminal may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved.

History: **En. Sec. 101, Ch. 89, L. 1927; re-en. Sec. 6014.112, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 22, Ch. 503, L. 1977; R.C.M. 1947, 5-1028.**

Cross-References

Trust offices of subsidiary trust companies, 32-1-805.

Trust offices of affiliated banks, 32-1-806.

Montana Electronic Funds Transfer Act, Title 32, ch. 6, part 1.

Satellite terminals, Title 32, ch. 6, part 2.

Geographical restrictions on certain satellite terminals, 32-6-204.

32-1-373. Banks may join federal reserve bank. Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of congress creating the same and the rules of such federal reserve bank.

History: **En. Sec. 28, Ch. 89, L. 1927; re-en. Sec. 6014.32, R.C.M. 1935; R.C.M. 1947, 5-507.**

Cross-References

Reserve requirements, 32-1-455.

32-1-374. Reorganization of national bank as state bank. Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein the written consent of such stockholders. Upon the filing of said articles as provided by law and upon the approval of the department, such bank shall be deemed to be reorganized under this chapter, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated before such reorganization.

History: En. Sec. 79, Ch. 89, L. 1927; re-en. Sec. 6014.90, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1006.

Cross-References

Examination and supervision by department, 32-1-211.

Business corporations — survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

Part 4

Operation and Regulation

Part Cross-References

Homeowners' loan corporation bonds — investment and security, 7-15-4504, 7-15-4505, 32-1-424, 32-2-406, 33-2-833, 72-31-102.

Deposit of state money in banks — interest thereon, 17-6-102, 17-6-104, 17-6-105.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — bank deposits and collections, Title 30, ch. 4.

U.C.C. — letters of credit, Title 30, ch. 5.

Warranty of money, 30-11-114.

Credit Transactions and Relationships, Title 31.

Issuing bad checks, 45-6-316.

Deceptive practices, 45-6-317.

Forgery, 45-6-325.

Discrimination by financial institutions prohibited, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Safe deposit box — joint tenancy, 70-1-308.

Banker's lien, 71-3-1502.

Delivery of money or personal property to a minor under Uniform Probate Code, 72-5-104.

Inheritance tax — transfers by foreign representatives, 72-16-701 through 72-16-706.

Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-401. Bank advertising before issuance of charter. It shall be unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department, as herein provided. Any such individual or member of such firm or officer of any such corporation so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

History: En. Sec. 107, Ch. 89, L. 1927; re-en. Sec. 6014.118, R.C.M. 1935; R.C.M. 1947, 5-1034.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

Organization and incorporation — articles of agreement, 32-1-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-402. When advertising as bank prohibited — trade names restricted. (1) A person, firm, company, partnership, or corporation, either domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received a certificate to do a banking business from the department, may not:

(a) advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit therefor; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) That person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on them an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) That person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) A person, firm, company, partnership, or corporation, domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received from the department a certificate to do a banking business, may not transact business under a name or title which contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company". Nothing contained in this section shall prohibit use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, and such use of the word "bank" is hereby authorized.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.

History: Ap. p. Sec. 29, Ch. 89, L. 1927; re-en. Sec. 6014.33, R.C.M. 1935; amd. Sec. 14, Ch. 431, L. 1975; amd. Sec. 6, Ch. 71, L. 1977; Sec. 5-508, R.C.M. 1947; Ap. p. Sec. 1, Ch. 217, L. 1977; Sec. 5-508.1, R.C.M. 1947; R.C.M. 1947, 5-508, 5-508.1.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Foreign corporations, 32-1-103.

Organization and incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

Corporate name, 35-1-301.

32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that he or it is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section must transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

History: En. Sec. 30, Ch. 89, L. 1927; re-en. Sec. 6014.34, R.C.M. 1935; amd. Sec. 15, Ch. 431, L. 1975; R.C.M. 1947, 5-509.

Cross-References

Injunctions, Title 27, ch. 19.

Examination and supervision by department, 32-1-211.

Organization and incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

32-1-404 through 32-1-410 reserved.

32-1-411. Extent assets may be pledged. No bank, banker, or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 ½ times the amount borrowed (except as otherwise authorized by the department).

History: En. Sec. 99, Ch. 89, L. 1927; re-en. Sec. 6014.110, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1026.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-412. Borrowing money — limitations. (1) A bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. At no time shall the bills payable and rediscounts of a bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) A bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

History: (1)En. Sec. 110, Ch. 89, L. 1927; re-en. Sec. 6014.121, R.C.M. 1935; amd. Sec. 37, Ch. 431, L. 1975; Sec. 5-1037, R.C.M. 1947; (2)En. Sec. 54, Ch. 89, L. 1927; re-en. Sec. 6014.58, R.C.M. 1935; amd. Sec. 19, Ch. 431, L. 1975; Sec. 5-533, R.C.M. 1947; R.C.M. 1947, 5-533, 5-1037.

Cross-References

Amount of capital, 32-1-307.

Pledging building and loan association assets, 32-2-405.

Credit unions — loan limit, 32-3-603.

32-1-413. Borrowing money for capital purposes — status of capital. Notwithstanding any other provision of law, any commercial bank, savings bank, trust company, or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the department and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company, or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company, or investment company to any person, partnership, or corporation and for the purpose of determining the maximum amount of money which such bank may borrow and for all other purposes of bank capital as may be required by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; re-en. Sec. 6017.1, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1967; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1130; amd. Sec. 16, Ch. 634, L. 1979.

Cross-References

Examination and supervision by department, 32-1-211.

Amount of capital, 32-1-307.

32-1-414. No certificate of deposit to issue for borrowed money. No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

History: En. Sec. 111, Ch. 89, L. 1927; re-en. Sec. 6014.122, R.C.M. 1935; R.C.M. 1947, 5-1038.

32-1-415 through 32-1-420 reserved.

32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section shall mean any bank organized to do the business specified in 32-1-106.

(2) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited therein must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned or unencumbered real estate worth at least double the amount to be secured. The remainder may be invested in the aforesaid character of securities or in approved personal securities, but no loan must be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and no loan upon personal security shall be made to any one person or partnership to an amount exceeding $10,000.

(3) No president, vice-president, director, or other officer or servant of a savings bank shall directly or indirectly borrow any of the funds of such bank or of its deposits or in any manner use the same in his private affairs or business, nor shall any director receive any pay, salary, or emolument until such interest as the directors shall have determined to allow depositors shall have been provided for in accordance with the regulations of the corporation.

(4) The real estate which such corporation may lawfully purchase, hold, and convey is:

(a) such as may be necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this chapter or given as security for money loaned or advanced;

(c) such as is purchased at the sale on judgment or decree obtained or rendered on money so loaned or advanced.

(5) Savings banks organized under the provisions of this chapter must not purchase, hold, or convey real estate in any other case or for any other purpose than herein specified and shall not buy or sell any personal property, except such as may be necessary for the proper transaction of its business or such as may have been pledged, mortgaged, or assigned to it to secure moneys loaned or advanced.

History: En. Sec. 24, Ch. 89, L. 1927; re-en. Sec. 6014.28, R.C.M. 1935; R.C.M. 1947, 5-503.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Investments authorized, certain government guaranteed bonds, 7-15-4505.

Bond Validating Act, Title 17, ch. 5, part 2.

Economic development bonds — legal investments, 17-5-1525.

Municipal Finance Consolidation Act bonds — legal investments, 17-5-1628.

School bonds, Title 20, ch. 9, part 4.

Contracts, Title 28, ch. 2 and 3.

Mortgages of real property, Title 71, ch. 1, part 2.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-1-422. Restriction on investment in corporate stock. (1) No commercial or savings bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within 6 months thereafter, if it can be sold for the amount of the claim of such bank against it. All capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within 1 year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

(2) Notwithstanding subsection (1), a commercial or savings bank may invest up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks.

History: En. Sec. 39, Ch. 89, L. 1927; re-en. Sec. 6014.43, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1973; R.C.M. 1947, 5-518; amd. Sec. 1, Ch. 259, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Business corporations — shares, Title 35, ch. 1, part 6.

32-1-423. Real estate which banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate which:

(a) is necessary for the proper transaction of its business, but it shall not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or moneys due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) of this section may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate shall be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

History: En. Sec. 25, Ch. 89, L. 1927; re-en. Sec. 6014.29, R.C.M. 1935; amd. Sec. 12, Ch. 431, L. 1975; amd. Sec. 4, Ch. 71, L. 1977; R.C.M. 1947, 5-504.

Cross-References

Definitions and kinds of estates in real property, Title 70, ch. 15.

Mortgages, Title 71, ch. 1.

32-1-424. Investments of financial institutions. (1) Trust and investment companies may lease, purchase, hold, and convey all real or personal property necessary to carry on their authorized business, as well as such real or personal property as the board of directors considers necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of any such corporation may invest the capital and assets of the corporation and keep the same invested in securities to be approved by the board, and the board may make such investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the same, or bonds or obligations of the United States.

(3) Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: (1), (2)En. Sec. 26, Ch. 89, L. 1927; re-en. Sec. 6014.30, R.C.M. 1935; Sec. 5-505, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 5-505, 35-142(part); amd. Sec. 1, Ch. 36, L. 1979.

Cross-References

Security for deposits of public funds, 17-6-103.

U.C.C. — investment securities, Title 30, ch. 8.

Building and loan associations — investments, 32-2-406.

Credit unions — investment of funds, 32-3-701.

Mortgages, Title 71, ch. 1.

32-1-425. Definitions. For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting in, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

History: En. 5-1601 by Sec. 3, Ch. 278, L. 1977; R.C.M. 1947, 5-1601.

Cross-References

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-426. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on July 1, 1977, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History: En. 5-1602 by Sec. 4, Ch. 278, L. 1977; R.C.M. 1947, 5-1602.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Trustees' Powers Act, Title 72, ch. 21.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-427. Fiduciaries — deposit of securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

History: En. 5-1603 by Sec. 5, Ch. 278, L. 1977; R.C.M. 1947, 5-1603.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Banks allowed to join federal reserve bank, 32-1-373.

Trustees' Powers Act, Title 72, ch. 21.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-428 and 32-1-429 reserved.

32-1-430. Authority of state banks to make real estate loans. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

Cross-References

Loan of money — what constitutes, 31-1-101.

Certificate of change to national bank, 32-1-365.

Mortgages, Title 71, ch. 1.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-431. Limitation on real estate loans. (1) A bank organized under the laws of this state may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, and may purchase an obligation so secured when the entire amount of the obligation is sold to the bank. The amount of the loan may not exceed 50% of the appraised value of the real estate offered as security, and the loan may not be made for a longer period than 5 years, except that:

(a) the loan may be made in an amount not to exceed 60% of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or similar instrument, under the terms of which the installment payments are sufficient to amortize 40% or more of the principal of the loan within not more than 20 years; and

(b) a bank may not make those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of 60% of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed 6 months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, are not loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. A bank may not invest in or be liable on any of those loans in an aggregate amount in excess of 50% of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses, which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment has been made by a federal reserve bank or in which an agency of the federal government cooperated or purchased a participation in, are not subject to the restrictions or limitations of this section upon loans secured by real estate.

(4) The limitations and restrictions imposed by this section do not prevent the renewal or extension of loans made before February 18, 1941, and do not apply to real estate loans which are insured under the provisions of any act of congress. Those limitations and restrictions do not apply to the making, extension, or renewal of any loans made under subchapter II of the act of congress known as the Servicemen's Readjustment Act of 1944 or any amendment or supplement to that act.

(5) This section, however, does not prevent a bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the real estate or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of the bank, the subsequent liens are necessary further to secure the payment of any debts and save the bank from loss.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

Cross-References

Economic development bonds — procedure prior to financing projects, 17-5-1526.

Economic development bonds — procedure prior to financing major projects, 17-5-1527.

Loan of money — what constitutes, 31-1-101.

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

Montana Agricultural Loan Authority Act — loan agreement, 80-12-201.

32-1-432. Limitations on loans. (1) (a) The total loans to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

(c) The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of 100% of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, partnership, or unincorporated association. That portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds made by a bank to another bank if the term of the loan does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase such loan made by an agency or board of the state of Montana authorized by law to provide such guaranties, commitments, or agreements.

History: En. Sec. 44, Ch. 89, L. 1927; re-en. Sec. 6014.48, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973; amd. Sec. 17, Ch. 431, L. 1975; R.C.M. 1947, 5-523; amd. Sec. 1, Ch. 258, L. 1983; amd. Sec. 1, Ch. 315, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (6).

1983 Amendment: Inserted (4) and (5).

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Loan of money — what constitutes, 31-1-101.

32-1-433. Limit on amount of bond issue. No commercial bank may purchase, agree to purchase, or underwrite any bond issue in excess of 50% of its unimpaired capital and surplus, except general obligation bonds of the United States, of the state of Montana, or of the cities, towns, counties, or school districts of this state.

History: En. Sec. 38, Ch. 89, L. 1927; re-en. Sec. 6014.42, R.C.M. 1935; amd. Sec. 7, Ch. 71, L. 1977; R.C.M. 1947, 5-517; amd. Sec. 1, Ch. 535, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "50% of its unimpaired capital and surplus, except general obligation bonds" for "10% of its assets, except bonds".

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Bond Validating Act, Title 17, ch. 5, part 2.
Economic development bonds — procedure prior to financing projects, 17-5-1526.
Economic development bonds — procedure prior to financing major projects, 17-5-1527.
School bonds, Title 20, ch. 9, part 4.
Montana Agricultural Loan Authority Act — loan agreements, 80-12-201.

32-1-434. Financial institutions authorized to obtain insurance and make loans when approved by federal housing administrator. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate and/or restricting the term of any such loan and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution which has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

History: **En. Sec. 1, Ch. 8, L. 1935; re-en. Sec. 6018.1, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1937; R.C.M. 1947, 5-1131.**

Cross-References
Insurance on deposits of public funds, 17-6-102.

32-1-435. Federal housing securities eligible collateral. Wherever collateral must or may be furnished by any depository in the state of Montana as security for the deposit of any funds whatsoever or wherever collateral must or may be deposited with any official of the state of Montana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes.

History: **En. Sec. 2, Ch. 25, L. 1937; R.C.M. 1947, 5-1132.**

Cross-References
Security for deposits of public funds, 17-6-103.

32-1-436. Repealed. Sec. 2, Ch. 9, L. 1983.

History: **En. Sec. 48, Ch. 89, L. 1927; re-en. Sec. 6014.52, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1969; amd. Sec. 1, Ch. 196, L. 1975; R.C.M. 1947, 5-527.**

32-1-437. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana shall have power and authority to accept for payment at a future date drafts drawn upon it by its customers and to issue letters of credit, authorizing holders thereof to draw drafts upon it or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm, or corporation shall not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank.

History: **En. Sec. 74, Ch. 89, L. 1927; re-en. Sec. 6014.85, R.C.M. 1935; amd. Sec. 11-103, Ch. 264, L. 1963; R.C.M. 1947, 5-1001.**

Cross-References
U.C.C. — bank deposits and collections, Title 30, ch. 4.
U.C.C. — letters of credit, Title 30, ch. 5.

32-1-438 and 32-1-439 reserved.

32-1-440. Financial institution's responsibility to provide notice when funds become available for withdrawal. (1) A depository bank shall provide clear and conspicuous written notice of the time periods and exceptions to the periods, concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the financial institution after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account;

(b) mailed to each of the financial institution's present customers on or before December 31, 1985; and

(c) posted in a conspicuous manner at each financial institution, automatic teller machine location, or other device that accepts deposits.

(3) A deposit slip or envelope, or any other printed form furnished by the depository financial institution used in connection with deposits, must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information.

History: **En. Sec. 1, Ch. 491, L. 1985.**

Compiler's Comments

Section Enacted Without Codification Instruction: Chapter 491, L. 1985, which enacted this section, did not include a codification instruction. The Code Commissioner determined that the logical placement of this section was in Title 32, ch. 1. Because the placement was not directed by codification instruction, technically references to "this chapter" or "Title 32, chapter 1, MCA" in sections 32-1-101 through 32-1-104, 32-1-106, 32-1-109, 32-1-110, 32-1-211, 32-1-235, 32-1-236, 32-1-301, 32-1-302, 32-1-305 through 32-1-307, 32-1-321, 32-1-322, 32-1-334, 32-1-340, 32-1-351, 32-1-355, 32-1-356, 32-1-374, 32-1-402, 32-1-403, 32-1-421, 32-1-423, 32-1-445, 32-1-452, 32-1-455, 32-1-466, 32-1-502 through 32-1-505, 32-1-515, 32-1-533, 32-1-535, 32-1-536, 32-1-538, and 32-1-601 do not include this section.

Cross-References

U.C.C. — depositary bank defined, 30-4-105.

32-1-441. Certified checks. (1) Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

(2) It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless at the time such check is certified the person, firm, or corporation drawing the check has on deposit with the bank an amount of money subject to the payment of such check equal to the amount specified in such check.

(3) Any officer or employee of any bank who shall willfully violate the provisions of this section or shall resort to any device or receive any fictitious obligation, directly or indirectly, in order to evade the provisions hereof shall be guilty of felony.

History: **En. Sec. 47, Ch. 89, L. 1927; re-en. Sec. 6014.51, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1947; R.C.M. 1947, 5-526.**

Cross-References

U.C.C. — certification of a check, 30-3-411.

False statements and entries considered felony, 32-1-236.

Felony charges — suspension or prohibition, 32-1-908.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

When no penalty specified — felony, 46-18-213.

32-1-442. Joint deposits — survivorship. (1) When a deposit has been made or shall hereafter be made in any bank transacting business in this state in the names of two or more persons, payable to either or payable to either or the survivor, or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of said persons, whether the other or others be living or not. The receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

(2) The term "deposit" shall include certificates of deposit heretofore or hereafter issued.

History: En. Sec. 49, Ch. 89, L. 1927; re-en. Sec. 6014.53, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1967; R.C.M. 1947, 5-528.

Cross-References

Building and loan associations, joint ownership of shares in, 32-2-416.

Credit unions, joint accounts or ownership of shares in, 32-3-505.

Safe deposit box — joint tenancy, 70-1-308.

Distribution when joint tenant fails to survive by 120 hours, 70-1-309.

32-1-443. Trust deposits — payment. Whenever any deposit shall be made in any bank by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made.

History: En. Sec. 50, Ch. 89, L. 1927; re-en. Sec. 6014.54, R.C.M. 1935; R.C.M. 1947, 5-529.

Cross-References

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Trusts for benefit of third persons, Title 72, ch. 23.

Uniform Principal and Income Act, Title 72, ch. 25.

32-1-444. Deposit in name of minor. Whenever any deposit shall be made in any bank by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit was made, and the receipt of such minor is a sufficient release or discharge for such deposit to the bank.

History: En. Sec. 51, Ch. 89, L. 1927; re-en. Sec. 6014.55, R.C.M. 1935; amd. Sec. 9, Ch. 71, L. 1977; R.C.M. 1947, 5-530.

Cross-References

Parental control over property of child, 40-6-232.

Periods of minority — how calculated, 41-1-102.

Minor cannot disaffirm certain obligations, 41-1-306.

Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-445. Demand or time deposits. Demand deposits, within the meaning of this chapter, shall comprise all deposits payable within 7 days, and time deposits shall comprise all deposits payable after 7 days and all savings accounts and certificates of deposit which are subject to not less than 7 days' notice before payment.

History: En. Sec. 52, Ch. 89, L. 1927; re-en. Sec. 6014.56, R.C.M. 1935; R.C.M. 1947, 5-531; amd. Sec. 1, Ch. 75, L. 1985.

Compiler's Comments

1985 Amendment: Decreased number of days from 30 to 7 throughout section.

Cross-References

Demand deposits defined, 32-1-109.

Time deposits defined, 32-1-109.

32-1-446. Safe deposit department. Any bank may conduct a safe deposit department but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. The liability of any bank for the safekeeping and protection of the contents of safety deposit boxes shall be determined by the contract endorsed on the receipt delivered to the renter of said box at the time of the rental, but in any event the obligation of the bank shall be limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

History: En. Sec. 35, Ch. 89, L. 1927; re-en. Sec. 6014.39, R.C.M. 1935; R.C.M. 1947, 5-514.

Cross-References

Safe deposit box — joint tenancy, 70-1-308.

32-1-447. Giving security for deposit prohibited — exceptions. It is unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof is unenforceable. This provision does not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

History: En. Sec. 112, Ch. 89, L. 1927; re-en. Sec. 6014.123, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1941; amd. Sec. 22, Ch. 71, L. 1977; R.C.M. 1947, 5-1039.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Security for deposits of public funds, 17-6-103.

Receivers — investment of funds, 27-20-303.

Claims — order of payment — priorities, 32-1-534.

Trustee accounts, Title 72, ch. 20, part 4.

32-1-448. Payments to foreign administrator. Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

History: En. Sec. 104, Ch. 89, L. 1927; re-en. Sec. 6014.115, R.C.M. 1935; R.C.M. 1947, 5-1031.

Cross-References

Payment of debt and delivery of property to foreign representative, 72-4-306.

32-1-449 and 32-1-450 reserved.

32-1-451. Statement of capital, resources, and liabilities. No bank or officer thereof shall advertise in any manner or publish any statement of the capital authorized or subscribed unless it or he advertises and publishes in connection therewith the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

History: **En. Sec. 32, Ch. 89, L. 1927; re-en. Sec. 6014.36, R.C.M. 1935; R.C.M. 1947, 5-511.**

Cross-References

Amount of capital, 32-1-307.

32-1-452. Dividends, surplus, losses, and bad debts. (1) The directors of any bank may, at certain times and in such manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any such dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until such surplus shall amount to 50% of its paid-up capital stock. The whole or any part of such surplus may at any time be converted into paid-in capital, and in such event the surplus shall be restored in the manner above provided until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created, and nothing herein contained shall be construed as prohibitory thereof.

(2) No dividend shall be declared or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt. Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared.

(3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the surplus, in which event such surplus shall be restored in the manner above provided in the amount required by this chapter.

History: **En. Sec. 34, Ch. 89, L. 1927; re-en. Sec. 6014.38, R.C.M. 1935; R.C.M. 1947, 5-513.**

Cross-References

Report of declaration of dividend, 32-1-232.

Conversion of surplus and undivided profits to capital stock, 32-1-340.

Business corporations — distributions to shareholders, 35-1-711.

32-1-453. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank shall not be included in calculation of its profits, unless any bank shall keep its books on a complete accrual basis in which event any such bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same shall be past due as defined by 32-1-452, and shall also carry on its books accrued interest, taxes, and expenses payable.

History: **En. Sec. 46, Ch. 89, L. 1927; amd. Sec. 1, Ch. 64, L. 1931; re-en. Sec. 6014.50, R.C.M. 1935; R.C.M. 1947, 5-525.**

Cross-References

Conversion of surplus and undivided profits to capital stock, 32-1-340.

32-1-454. Past-due and doubtful paper. Every bank carrying any bad debt or a debt of doubtful value as an asset shall upon the request or demand of the department collect the same or put it in good bankable condition or charge it out of its books.

History: En. Sec. 102, Ch. 89, L. 1927; re-en. Sec. 6014.113, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1029.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.

32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(2) The department may establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system.

(3) A bank approved by the department as a reserve bank must at all times maintain a reserve of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(4) A solvent bank of good repute having a full paid-up capital and surplus of $300,000, doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) It shall be the duty of any bank whose reserve shall drop below the legal requirements to report the matter to the department immediately and as often thereafter as the department shall ask for said report.

(6) When the reserve of a bank falls below the amount required by this section, the bank may not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried.

(8) However, a compliance by member banks with the federal reserve banking laws, rules, and regulations shall be held to be a compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter.

History: (1) thru (4), (6) thru (8)En. Sec. 53, Ch. 89, L. 1927; re-en. Sec. 6014.57, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1967; amd. Sec. 18, Ch. 431, L. 1975; Sec. 5-532, R.C.M. 1947;

(5)En. Sec. 103, Ch. 89, L. 1927; re-en. Sec. 6014.114, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1030, R.C.M. 1947; R.C.M. 1947, 5-532, 5-1030.

Cross-References

Examination and supervision by department, 32-1-211.

Banks may join federal reserve bank, 32-1-373.

32-1-456 through 32-1-460 reserved.

32-1-461. Bonding of employees. (1) The board of directors of every bank shall require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers be bonded.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds shall be in such form as is provided or approved by the department.

(3) The bonds shall be approved by the president of the bank and his action reported to the board of directors.

(4) All bonds required by this section shall be kept in the custody of the bank subject to inspection by examiners from the department; provided, as far as possible, they may not be placed in the custody of the officer or employee for whom the same is given.

History: En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931; re-en. Sec. 6014.116, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 21, Ch. 71, L. 1977; R.C.M. 1947, 5-1032.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Examination and supervision by department, 32-1-211.

Selection of officers and employees — meetings and minutes, 32-1-325.

32-1-462. Persons previously convicted under banking laws — bank employment. It shall be unlawful for anyone having been convicted of the violations of the banking laws of any state or nation to accept employment in a bank in this state without first stating said facts to the directors of said bank. No such person shall be employed in any bank without the approval of the department, granted in writing after a full consideration of the facts.

History: En. Sec. 120, Ch. 89, L. 1927; re-en. Sec. 6014.130, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1046.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Rules adopted by board — new banks, 32-1-203.

Examination and supervision by department, 32-1-211.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Selection of officers and employees — meetings and minutes, 32-1-325.

Violation of notice or final order — penalties, 32-1-921.

32-1-463. Sale of securities by officer to bank. (1) No director, officer, employee, or controlling stockholder of any bank shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

History: En. Sec. 37, Ch. 89, L. 1927; re-en. Sec. 6014.41, R.C.M. 1935; R.C.M. 1947, 5-516.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Felony charges — suspension or prohibition, 32-1-908.

32-1-464. Fraud by director, officer, or employee. A director, officer, agent, or employee of a bank is guilty of a felony if that person:

(1) knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) concurs in omitting to make any material entry thereof;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 40, Ch. 89, L. 1927; re-en. Sec. 6014.44, R.C.M. 1935; amd. Sec. 16, Ch. 431, L. 1975; amd. Sec. 8, Ch. 71, L. 1977; R.C.M. 1947, 5-519; amd. Sec. 2, Ch. 36, L. 1979.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Examination and supervision by Department, 32-1-211.

Special reports to department, 32-1-233.

False statements and entries considered felony, 32-1-236.

Selection of officers and employees — meetings and minutes, 32-1-325.

Deposits in insolvent bank, 32-1-504.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Criminal law — "knowingly" defined, 45-2-101.

Felony — no penalty specified, 46-18-213.

32-1-465. Overdraft by officer or employee — receiving personal profit from loan. An officer, director, agent, teller, clerk, or employee of a bank is guilty of a misdemeanor if that person:

(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or

(2) asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or

the purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank.

History: **En. Sec. 41, Ch. 89, L. 1927; re-en. Sec. 6014.45, R.C.M. 1935; R.C.M. 1947, 5-520; amd. Sec. 3, Ch. 36, L. 1979.**

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Theft, 45-6-301.

Issuing a bad check, 45-6-316.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-466. Purchase of obligation of bank by officer. No director, officer, agent, or other employee of any bank shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank or of any of the assets of said bank for a sum less than shall appear upon the face of the obligation or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

History: **En. Sec. 43, Ch. 89, L. 1927; re-en. Sec. 6014.47, R.C.M. 1935; R.C.M. 1947, 5-522.**

Cross-References

Punishment, 32-1-110.

Purchase or loan of own capital stock prohibited, 32-1-335.

32-1-467. Loans to managing officer or director. No bank shall make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such bank, banking institution, or trust company exceeds in amount 10% of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank.

History: **En. Sec. 45, Ch. 89, L. 1927; re-en. Sec. 6014.49, R.C.M. 1935; R.C.M. 1947, 5-524.**

Cross-References

Loan of money — what constitutes, 31-1-101.

Deceptive practices, 45-6-317.

32-1-468. Removal of directors, officers, or employees. Any director, officer, or employee of any bank found by the department, after examination, to be negligent, dishonest, reckless, or incompetent shall be removed from office by the board of directors of such bank on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness, or incompetency of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, by a depositor or creditor for recovery of such losses.

History: **En. Sec. 109, Ch. 89, L. 1927; re-en. Sec. 6014.120, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1036.**

Cross-References

Negligence, 27-1-701, 27-1-702.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

32-1-469 and 32-1-470 reserved.

32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction thereof shall be punished as for other felonies.

History: En. Sec. 113, Ch. 89, L. 1927; re-en. Sec. 6014.124, R.C.M. 1935; amd. Sec. 42, Ch. 359, L. 1977; R.C.M. 1947, 5-1040.

Cross-References
Theft, 45-6-301.
Felony — no penalty specified, 46-18-213.

32-1-472. Concealing actions from directors. Any officer or employee of any bank who intentionally conceals from the directors of such corporation, or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor and on conviction must be imprisoned in the county jail for not more than 12 months for each offense and may also be fined not more than $500, at the discretion of the court.

History: En. Sec. 114, Ch. 89, L. 1927; re-en. Sec. 6014.125, R.C.M. 1935; R.C.M. 1947, 5-1041.

Cross-References
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

32-1-473. Theft of bank funds by officers or employees. Any banker, officer, director, or employee of any bank who fraudulently appropriates or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent in any case to injure or defraud the bank or any person or corporation or to deceive any officer of the bank or any other person or anyone appointed to examine the affairs of the bank or any person who with like intent, aids or abets any officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction thereof shall be imprisoned in the state prison for a period of not exceeding 20 years or be fined an amount not exceeding $50,000, or both.

History: En. Sec. 117, Ch. 89, L. 1927; re-en. Sec. 6014.128, R.C.M. 1935; amd. Sec. 43, Ch. 359, L. 1977; R.C.M. 1947, 5-1044; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments
1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for

which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

"Felony" defined, 45-2-101.

Theft, 45-6-301.

32-1-474. False statement to obtain loan. Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time of payment of any debt due such bank shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 1 year, or both.

History: En. Sec. 118, Ch. 89, L. 1927; re-en. Sec. 6014.129, R.C.M. 1935; R.C.M. 1947, 5-1045.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

"Misdemeanor" defined, 45-2-101.

Deceptive practices, 45-6-317.

32-1-475 through 32-1-480 reserved.

32-1-481. Bank holidays. In addition to emergency closings authorized by 32-1-561 through 32-1-565, a bank in the state of Montana may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 264, L. 1979; amd. Sec. 1, Ch. 435, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing text for former provision, which read: "(1) Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

(a) Each Sunday;

(b) New Year's Day, January 1;

(c) Memorial Day, the last Monday in May;

(d) Independence Day, July 4;

(e) Labor Day, the first Monday in September;

(f) Thanksgiving Day, the fourth Thursday in November;

(g) Christmas Day, December 25;

(h) On such days as banks are closed in accordance with 32-1-561 to 32-1-565, as amended.

(2) Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing

or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located."

32-1-482. Transaction on holidays. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state because done or performed during any time other than regular banking hours or on a legal holiday, provided that nothing shall be construed herein to compel any bank in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, to keep open for transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

History: En. Sec. 115, Ch. 89, L. 1927; re-en. Sec. 4016.126, R.C.M. 1935; R.C.M. 1947, 5-1042.

Cross-References

U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.

Effect of closing, 32-1-565.

32-1-483. Closing on Saturdays authorized — Saturday treated as holiday. Any bank as defined in 32-1-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. Any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at or by or with respect to any bank including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank for the transaction of business on any Saturday under the authority of 32-1-483 through 32-1-485.

History: En. Sec. 1, Ch. 124, L. 1955; amd. Sec. 23, Ch. 71, L. 1977; R.C.M. 1947, 5-1055.

Cross-References

Effect of closing, 32-1-565.

32-1-484. Bylaws regarding banking hours and business days. (1) At any regular or special meeting of its board of directors, any bank, as herein defined, and any national bank or national banking association and any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change its banking hours or business days, including remaining closed or closing on any Saturdays.

(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or

(b) mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and

(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.

(3) In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw.

History: **En. Sec. 2, Ch. 124, L. 1955; R.C.M. 1947, 5-1056.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Bylaws, 32-1-308.

Effect of closing, 32-1-565.

32-1-485. Interest payable at bank on Saturday — how paid. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of 32-1-483 through 32-1-485, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: **En. Sec. 3, Ch. 124, L. 1955; R.C.M. 1947, 5-1057.**

Cross-References

Interest on deposits of public funds — conformity with federal law, 17-6-104.

U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.

Loan presumed to be on interest, 31-1-103.

Interest defined, 31-1-104.

32-1-486 through 32-1-490 reserved.

32-1-491. Destruction of bank records. (1) Banks are required to preserve or keep their records of customer accounts for at least 8 years next after January 1 of the year following the time of the making of such records; provided, however, that records showing unpaid balances in favor of depositors of any banks shall not be destroyed. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1).

History: **En. Sec. 1, Ch. 77, L. 1951; R.C.M. 1947, 5-1050; amd. Sec. 1, Ch. 314, L. 1983.**

Compiler's Comments

1983 Amendment: In (1) substituted "Banks are required to preserve or keep their records of customer accounts for at least 8 years" for "Banks shall not be required to preserve or keep their records for a longer period than 11 years"; in first sentence of (1) substituted last "records" for "ledger sheets"; and inserted (2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

32-1-492. Reproduction of bank records — admissibility in evidence. (1) Banks are hereby authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, and to preserve, store, use, and employ the same in carrying on business.

(2) In any action or proceedings in which any bank records may be called in question or be demanded of any bank or any officer or employee thereof,

a showing that such records have been destroyed in the regular course of business shall be a sufficient excuse for the failure to produce them.

(3) Upon such showing, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions thereof (and photographic enlargements and prints of microfilm reproductions), when made in the regular course of business, shall be admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter) made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda which were in existence on July 1, 1951, shall be admissible in evidence in proof of the form, text, and content of any said originals which may be destroyed in the regular course of business after July 1, 1951.

History: En. Sec. 2, Ch. 77, L. 1951; R.C.M. 1947, 5-1051.

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or board prima facie evidence, 26-1-606.

Contents of writings, recordings, and photographs, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-493. Admissibility of copies in evidence — exception when original available. Any photostatic or photographic or microfilm reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event when shown to be made in the regular course of business of the bank. But nothing contained in 32-1-491 through 32-1-495 shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence.

History: En. Sec. 3, Ch. 77, L. 1951; R.C.M. 1947, 5-1052.

Cross-References

Admissibility of duplicates, copies of certain entries, Rule 1003, Montana Rules of Evidence (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-494. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions. Reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History: En. Sec. 4, Ch. 77, L. 1951; R.C.M. 1947, 5-1053.

Cross-References

U.C.C. — "good faith" defined, 30-1-201.

32-1-495. Application. The provisions of 32-1-491 through 32-1-495 shall be applicable to all records in existence on February 23, 1951, and to all records originating after said date and shall apply to all banks organized under the laws of the state of Montana and also to all national banks located in the state of Montana, as far as applicable to such national banks.

History: **En. Sec. 5, Ch. 77, L. 1951; R.C.M. 1947, 5-1054.**

Cross-References

Change from state to national bank, 32-1-361.

National bank powers extended to state banks, 32-1-362.

Certificate of change to national bank, 32-1-365.

Reorganization of national bank as state bank, 32-1-374.

Part 5

Dissolution, Closing, and Liquidation

Part Cross-References

Receivers, Title 27, ch. 20.

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank or trust company may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank or trust company desiring to voluntarily liquidate shall apply to the department for permission to so liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.

History: **En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935; re-en. Sec. 6014.24, R.C.M. 1935; amd. Sec. 10, Ch. 431, L. 1975; R.C.M. 1947, 5-301.**

Cross-References

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-1-502. Grounds for closing bank. (1) When it appears to the department that:

(a) a bank has willfully violated its charter or a law of this state;

(b) a bank has willfully violated a general rule of the department, made in accordance with law;

(c) the capital of a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the bank notifies the department in writing that the impairment cannot be made good;

(d) a bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) a bank's reserve has fallen below the amount required by law and it has failed to make good that reserve within 30 days after being requested to do so by the department or, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if it is continually allowing its reserve to fall below the required amount;

(f) a bank is conducting business in an unsafe and unauthorized manner or is in an unsafe or unsound condition;

(g) a bank refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a bank has refused to be examined under oath regarding the affairs, business, or concerns of any bank insofar as they relate to solvency or matters having to do with the supervision by the department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets, and business of every description of the bank and hold them and retain possession of them until the bank is authorized by the department to resume business or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily or in the manner provided by law.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its employees and agents may not be held liable civilly or criminally or upon their official bonds for action taken under this section or for any failure to act under it.

History: En. Sec. 121, Ch. 89, L. 1927; re-en. Sec. 6014.131, R.C.M. 1935; amd. Sec. 43, Ch. 431, L. 1975; R.C.M. 1947, 5-1101.

Cross-References

Extent of surety's liability, 28-11-411.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

Reserve requirements, 32-1-455.

Fraud by director, officer, or employee, 32-1-464.

32-1-503. Bank insolvent when. A bank is insolvent within the meaning of this chapter when all of its capital, surplus, and undivided profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

History: En. Sec. 88, Ch. 89, L. 1927; re-en. Sec. 6014.99, R.C.M. 1935; R.C.M. 1947, 5-1015.

Cross-References

Insolvency — what constitutes, 31-2-202.

Insolvency defined, 31-2-302.

32-1-504. Deposits in insolvent bank. (1) Except as otherwise provided by the Uniform Commercial Code, whenever any bank shall be insolvent in the manner described and set forth in this chapter, such bank shall not accept or receive on deposit any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or

United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the bank from and after the date of the accrual of such insolvency. When such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the department.

(2) In the event such insolvency be not made good, then any and all such trust deposits shall be returned to the depositors making them.

(3) Any officer, director, cashier, manager, member, partner, or managing partner thereof who shall knowingly accept or receive, be accessory to, or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or imprisonment in the state prison not exceeding 5 years or by both fine and imprisonment.

History: En. Sec. 70, Ch. 89, L. 1927; re-en. Sec. 6014.74, R.C.M. 1935; amd. Sec. 11-102, Ch. 264, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-803.

Cross-References

"Money" defined, 30-1-201.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

U.C.C. — insolvency of bank holding funds for documentary credit, 30-5-117.

Investments of financial institutions, 32-1-424.

Fraud by director, officer, or employee, 32-1-464.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-505. Penalty for receiving deposits when insolvent or for making false statements. (1) Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in 32-1-504; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports is subject to imprisonment in the state prison for a term not exceeding 5 years, a fine not exceeding $50,000, or both.

(2) Any person or the members of any partnership or banking association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when such person, partnership, or banking association is insolvent, or who subscribe or make any false statement or entries in the books of any such bank or who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any bank provided for in this chapter or who willfully subscribe or make false reports to the department shall be guilty of a felony and shall be punishable by imprisonment in the state prison for a term not exceeding 5 years, by a fine not exceeding $50,000, or by both such fine and imprisonment.

History: (1)En. Sec. 69, Ch. 89, L. 1927; re-en. Sec. 6014.73, R.C.M. 1935; amd. Sec. 16, Ch. 71, L. 1977; Sec. 5-802, R.C.M. 1947; (2)En. Sec. 87, Ch. 89, L. 1927; re-en. Sec. 6014.98, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1014, R.C.M. 1947; R.C.M. 1947, 5-802, 5-1014; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Punishment, 32-1-110.

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

"Felony" defined, 45-2-101.

Unsworn falsification to authorities, 45-7-203.

32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale shall be given by certified or registered mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and makes them void in the hands of the stockholder or his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment.

History: En. Sec. 68, Ch. 89, L. 1927; re-en. Sec. 6014.72, R.C.M. 1935; amd. Sec. 29, Ch. 431, L. 1975; R.C.M. 1947, 5-801; amd. Sec. 4, Ch. 36, L. 1979.

Cross-References

Reports to Department of Commerce, 32-1-231.

Special reports to department, 32-1-233.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

Purchase or loan of own capital stock prohibited, 32-1-335.

Increase or diminution of capital stock, 32-1-351.

32-1-507. Power of closed banks to borrow money from governmental agencies. After applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

History: En. Sec. 1, Ch. 3, Ex. L. 1933; re-en. Sec. 6015.1, R.C.M. 1935; amd. Sec. 62, Ch. 431, L. 1975; amd. Sec. 26, Ch. 71, L. 1977; R.C.M. 1947, 5-1126.

Cross-References

Closed banking institutions empowered to borrow from the corporation, 32-1-606.

32-1-508. Corporate existence — ceases when. The charters and the corporate existence of banks shall cease automatically and become nonexistent upon the completion of liquidation of the affairs of said bank, whether accomplished voluntarily or through legal process. For the purposes of this section, a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

History: En. Sec. 106, Ch. 89, L. 1927; re-en. Sec. 6014.117, R.C.M. 1935; R.C.M. 1947, 5-1033.

Cross-References

Business corporations — filing of articles of dissolution — issuance of certificate of dissolution — effect, 35-1-912.

Business corporations — decree of involuntary dissolution in proceedings to liquidate, 35-1-926.

32-1-509. Taxes on banks which have ceased to do business. Whenever any bank ceases to do business as a bank, no taxes shall be levied or collected in accordance with the laws governing the assessment of banks but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

History: En. Sec. 95, Ch. 89, L. 1927; re-en. Sec. 6014.106, R.C.M. 1935; R.C.M. 1947, 5-1022.

Cross-References
Taxation — return and payment on corporate dissolution, 15-31-143.
Taxation — banks and savings and loan associations, Title 15, ch. 31, part 7.
Business corporations — state tax clearance certificate, 35-1-928.

32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, he is subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit his office.

History: En. Sec. 122, Ch. 89, L. 1927; re-en. Sec. 6014.132, R.C.M. 1935; amd. Sec. 44, Ch. 431, L. 1975; R.C.M. 1947, 5-1102.

Cross-References
Rules of conduct for state officers and state employees, 2-2-121.
Punishment, 32-1-110.
Examination and supervision by department, 32-1-211.
Confidentiality — penalties, 32-1-234.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

32-1-511. Bank may be placed in department's possession. A bank may place its affairs and assets under the control and in the possession of the department by posting a notice on the front door of the bank indicating that it is in the possession of the department. The notice shall be signed by a majority of the directors in office of the bank. Immediately upon the posting of the notice by a bank, it shall notify the department of its action.

History: En. Sec. 123, Ch. 89, L. 1927; re-en. Sec. 6014.133, R.C.M. 1935; amd. Sec. 45, Ch. 431, L. 1975; R.C.M. 1947, 5-1103.

Cross-References
Examination and supervision by department, 32-1-211.

32-1-512. Effect of posting notice. The posting of the notice by the directors of a bank or of a like notice by the department is sufficient to place all assets and property of the bank, of whatever nature and wherever located, in possession of the department and operates as a bar to an attachment or other legal proceedings against the bank or its assets. No valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of the bank after the posting of the notice or after taking possession of a bank by the department without its consent.

History: En. Sec. 124, Ch. 89, L. 1927; re-en. Sec. 6014.134, R.C.M. 1935; amd. Sec. 46, Ch. 431, L. 1975; R.C.M. 1947, 5-1104.

Cross-References
Receivers, Title 27, ch. 20.
Attachments prohibited, 32-1-111.
Liens — general provisions, Title 71, ch. 3, part 1.

32-1-513. Taking possession of bank — notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally or by wire, all corresponding banks and all persons or corporations known to it to be in possession of any of the estate of the bank.

History: En. Sec. 125, Ch. 89, L. 1927; re-en. Sec. 6014.135, R.C.M. 1935; amd. Sec. 47, Ch. 431, L. 1975; R.C.M. 1947, 5-1105.

Cross-References
Notice — actual and constructive, 1-1-217.
Examination and supervision by Department, 32-1-211.

32-1-514. Resumption after closing. After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by the department.

History: En. Sec. 126, Ch. 89, L. 1927; re-en. Sec. 6014.136, R.C.M. 1935; amd. Sec. 48, Ch. 431, L. 1975; amd. Sec. 24, Ch. 71, L. 1977; R.C.M. 1947, 5-1106.

Cross-References

Examination and supervision by department, 32-1-211.

Reserve requirements, 32-1-455.

32-1-515. Powers of department on closing bank — court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys due to that bank and to do those other acts necessary to conserve its assets and business and the department shall proceed to liquidate the affairs of the bank.

(2) The department may, in its discretion and except as otherwise limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank and the speedy and economical liquidation of the assets and affairs of the bank and the payment of its creditors or for the reopening and resumption of business where that is practicable or desirable.

(3) It may institute, in its own name or in the name of the bank, those suits and other legal proceedings as it considers expedient for those purposes.

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court in chambers, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court.

(b) In the court proceedings the bank shall be made a party by notice issued on order of the court or judge, in place of summons, and served upon some officer of the bank, if there is any in the county. If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing.

(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.

History: En. Sec. 127, Ch. 89, L. 1927; re-en. Sec. 6014.137, R.C.M. 1935; amd. Sec. 49, Ch. 431, L. 1975; R.C.M. 1947, 5-1107.

Cross-References

Notice — actual and constructive, 1-1-217.

Parties — joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of State Banking Board, 32-1-202.

Examination and supervision by Department, 32-1-211.

32-1-516. Recourse of aggrieved bank — injunction. (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 10 days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them.

History: En. Sec. 128, Ch. 89, L. 1927; re-en. Sec. 6014.138, R.C.M. 1935; amd. Sec. 50, Ch. 431, L. 1975; R.C.M. 1947, 5-1108.

Cross-References

Pleadings, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

Judgment, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

32-1-517. Department may retain bank employees — liquidating agent's salary and expenses. (1) The department may retain those officers or employees of the bank which it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the bank that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the banks. The funds for those expenses shall be raised by assessing each bank in ratio herein set forth and paying those expenses direct to the persons entitled to them, without depositing any of the funds in the state treasury.

History: En. Sec. 129, Ch. 89, L. 1927; re-en. Sec. 6014.139, R.C.M. 1935; amd. Sec. 51, Ch. 431, L. 1975; R.C.M. 1947, 5-1109.

Cross-References

Agency, Title 28, ch. 10.

Selection of officers and employees — minutes and meetings, 32-1-325.

Bonding of employees, 32-1-461.

Business corporations — procedure in liquidation of corporation by court, 35-1-922.

32-1-518. Compensation of agents and attorneys. The compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department shall be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation has been fixed and approved and the services rendered, the compensation shall be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

History: **En. Sec. 130, Ch. 89, L. 1927; re-en. Sec. 6014.140, R.C.M. 1935; amd. Sec. 52, Ch. 431, L. 1975; R.C.M. 1947, 5-1110.**

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

Agency, Title 28, ch. 10.

32-1-519 through 32-1-530 reserved.

32-1-531. Notice to creditors of insolvent bank. The department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice shall call on all persons who have claims against the bank to present them to the department or its authorized agent at a place to be specified in the notice and to make sworn proof, in form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

History: **En. Sec. 131, Ch. 89, L. 1927; re-en. Sec. 6014.141, R.C.M. 1935; amd. Sec. 53, Ch. 431, L. 1975; R.C.M. 1947, 5-1111.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Assignments for benefit of creditors — notice to creditors to present claims, 31-2-221.

Business corporations — procedure after filing of statement of intent to dissolve — notice to creditors — liquidation, 35-1-906.

32-1-532. Claims — allowance and rejection. (1) The department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by certified or registered mail and an affidavit of the service of the notice, which shall be prima facie evidence of service, shall be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where the bank is located within 90 days after the service to fix the amount of the claim and its order of priority or either. An appeal from the department's allowance, either as to priority or amount, may also be taken to the district court of that county by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

History: **En. Sec. 132, Ch. 89, L. 1927; re-en. Sec. 6014.142, R.C.M. 1935; amd. Sec. 54, Ch. 431, L. 1975; R.C.M. 1947, 5-1112.**

Cross-References

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

Business corporations — filing of claims in liquidation proceedings, 35-1-924.

32-1-533. Payment of claims. (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it shall be paid in the order of priority fixed in this chapter.

(2) Those filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time the claims are filed. As against other claims of the same order of priority on which dividends have been paid, they are entitled to payment in a proportionate amount before further payments are made on those other claims.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders based on stock or assessments paid on stock, have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

History: **En. Sec. 133, Ch. 89, L. 1927; re-en. Sec. 6014.143, R.C.M. 1935; amd. Sec. 55, Ch. 431, L. 1975; R.C.M. 1947, 5-1113.**

Cross-References

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

32-1-534. Claims — order of payment — priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, holders of cashier's checks, certified checks, contractual liabilities, and drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) of this section or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and likewise property on which the bank has liens by mortgage or otherwise. It may also, in its discretion, create a fund or retain in its hands, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a bank or loans or discounts that have been outstanding as rediscounts of a bank prior to the closing of it is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section shall be allowed.

(4) Deposits of a person, firm, or corporation in a bank which is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3) of this section), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor.

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; re-en. Sec. 6014.144, R.C.M. 1935; amd. Sec. 11-104, Ch. 264, L. 1963; amd. Sec. 56, Ch. 431, L. 1975; R.C.M. 1947, 5-1114; amd. Sec. 5, Ch. 36, L. 1979.

Cross-References

Security for deposits of public funds, 17-6-103.

Powers of receiver, 27-20-302.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

U.C.C. — letters of credit — insolvency of bank holding funds for documentary credit, 30-5-117.

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

Certified checks, 32-1-441.

Giving security for deposit prohibited — exceptions, 32-1-447.

32-1-535. Claims — partial payments — assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more may be paid that creditor until the payment made other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested.

History: En. Sec. 135, Ch. 89, L. 1927; re-en. Sec. 6014.145, R.C.M. 1935; amd. Sec. 5, Ch. 145, L. 1931; amd. Sec. 57, Ch. 431, L. 1975; amd. Sec. 25, Ch. 71, L. 1977; R.C.M. 1947, 5-1115.

Cross-References

Powers of receivers, 27-20-302.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

Escheat, 70-1-203.

Property held by court or public officer or agency, 70-9-207.

32-1-536. Deposit of funds in department's hands. All funds in the hands of the department belonging to a bank in process of liquidation shall be deposited in the department's name in those banks within the state which may be selected and designated by it and subject to its checks. Those funds are to be preferred and protected as provided in this chapter.

History: En. Sec. 136, Ch. 89, L. 1927; re-en. Sec. 6014.146, R.C.M. 1935; amd. Sec. 58, Ch. 431, L. 1975; R.C.M. 1947, 5-1116.

Cross-References

Investments of financial institutions, 32-1-424.

32-1-537. Disposition of unclaimed funds. (1) The department shall certify to the state treasurer a complete list of funds remaining with it uncalled for, which have been left with it in its official capacity, in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, it shall transmit to the state treasurer the funds with accumulated interest on them, which it has so held in trust for 6 months. A copy of the certificate shall also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund of this state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer may apply to the department for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the auditor who shall audit the claim and, if found correct, so certify to the department, which, if it approves the claim, shall transmit the claim to the legislature with a statement of its approval.

History: En. Sec. 137, Ch. 89, L. 1927; re-en. Sec. 4016.147, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1961; amd. Sec. 59, Ch. 431, L. 1975; amd. Sec. 2, Ch. 343, L. 1977; R.C.M. 1947, 5-1117.

Cross-References

State finance — fund structure, 17-2-102.

Deposit of funds in the hands of State Treasurer, 17-6-101.

Property of business association or of banking or financial organization held in course of dissolution, 70-9-205.

32-1-538. Disposition of assets remaining after payment of claims. (1) When the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court in open court or in chambers for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to that other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice which the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders shall by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) of this section.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the bank is located. Upon notice which the court may order, the report shall be set for hearing before the court and, if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court of the county in which the bank is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern and considered by the department to be of no value may be destroyed. However, no correspondence or records may be destroyed until 10 years after the date the bank ceased to be a going concern.

(3) On application for orders as provided in this section, the bank shall be made a party by notice issued on order of the court or judge and served in a manner the court directs, and applications authorized by this section may be heard at any time in court or in chambers, as the court may order, upon not less than 5 days' posted or served notice of the hearing.

History: En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935; re-en. Sec. 6014.148, R.C.M. 1935; amd. Sec. 60, Ch. 431, L. 1975; R.C.M. 1947, 5-1118.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Examination and supervision by Department, 32-1-211.

Destruction of bank records, 32-1-491.

Deposit of amount due certain shareholders upon voluntary or involuntary dissolution, 35-1-929.

Termination of trust, Title 72, ch. 23, part 5.

32-1-539 through 32-1-550 reserved.

32-1-551. Liquidating officer's powers and duties. (1) At any time after taking possession of a bank for the purpose of liquidation, the liquidating officer duly qualified under the laws, as soon as he ascertains that the assets of such bank will be insufficient to pay its debts and liabilities, may proceed to collect and enforce the stockholders' liability. For that purpose he may institute and maintain in his own name as such liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. He may receive and receipt for moneys received on account of stockholders' liability, and any money so paid to the liquidating officer by a stockholder in whole or partial satisfaction of his liability shall not be deemed paid voluntarily but shall give the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by creditor or liquidating officer. The liquidating officer is authorized, by and with the consent of the court having jurisdiction of such liquidation, to compromise, settle, and compound claims for stockholders' liability, and such settlements and compromises when approved by the court shall be legal and binding upon all parties concerned, including creditors.

(2) All sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, shall be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution, except that the liquidating officer may deduct from amounts collected the court costs or attorney's fees (such attorney's fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney's fees shall not apply to collections which are made outside of the state of Montana) and other expenses incurred by him in the prosecution of any action for the collection thereof.

History: **En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-402.**

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

Officers' fees, prepayment, Title 25, ch. 10, part 4.

Powers of receiver, 27-20-302.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

Procedure in liquidation of corporation by court, 35-1-922.

32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the question of the time when and the court where necessary legal proceedings shall be conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of 32-1-333 and 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which is a member of the federal deposit insurance corporation.

History: **En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(1) thru (3).**

Cross-References

Venue, Title 25, ch. 2.

Powers of receiver, 27-20-302.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

32-1-553. Department to file inventory — report required. The department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. It shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report shall contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account shall be set for hearing upon the notice the court may require and, if found to be correct, shall be approved by the court.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(4).

Cross-References

Assignments for benefit of creditors — inventory required, 31-2-213.

Purchase of obligation of bank by officer, 32-1-466.

32-1-554 through 32-1-560 reserved.

32-1-561. Definitions. As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

(a) fire;
(b) flood;
(c) earthquake;
(d) hurricanes;
(e) wind, rain, or snowstorms;
(f) labor disputes and strikes;

(g) power failures;
(h) transportation failures;
(i) interruption of communication facilities;
(j) shortages of fuel, housing, food, transportation, or labor;
(k) robbery or attempted robbery;
(l) actual or threatened enemy attack;
(m) epidemics or other catastrophes;
(n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: **En. Sec. 1, Ch. 32, L. 1971; amd. Sec. 38, Ch. 431, L. 1975; R.C.M. 1947, 5-1058.**

Cross-References

Disaster and emergency services, Title 10, ch. 3.

Bank holidays, 32-1-481.

Robbery, 45-5-401.

Theft, 45-6-301.

Riot, 45-8-103.

32-1-562. Power of department. When the department is of the opinion that an emergency exists or is impending in this state or in any part of this state, it may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending which affects or may affect a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, it may authorize the particular bank or banks or office or offices so affected to close. The office or offices so closed shall remain closed until the department proclaims that the emergency has ended or until such earlier time as the officers of the bank determine that one or more offices theretofore closed because of the emergency should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: **En. Sec. 2, Ch. 32, L. 1971; amd. Sec. 39, Ch. 431, L. 1975; R.C.M. 1947, 5-1059.**

32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending which affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; or

(b) that the federal reserve bank of Minneapolis is not open for business.

History: **En. Sec. 3, Ch. 32, L. 1971; amd. Sec. 40, Ch. 431, L. 1975; R.C.M. 1947, 5-1060; amd. Sec. 2, Ch. 264, L. 1979.**

Cross-References

Powers and duties of Governor, 2-15-201.

Selection of officers and employees — meetings and minutes, 32-1-325.

Bank holidays, 32-1-481.

32-1-564. Notice of bank closing. A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971; amd. Sec. 41, Ch. 431, L. 1975; R.C.M. 1947, 5-1061.

Cross-References

National bank powers extended to state banks, 32-1-362.

Bank holidays, 32-1-481.

32-1-565. Effect of closing. (1) A day on which a bank or any of its offices is closed during any part of its normal banking hours under 32-1-562 and 32-1-563 with respect to that bank or, if not all of its offices are closed, then with respect to the office or offices which are closed shall be a legal holiday for all purposes with respect to any banking business. No liability or loss of rights of any kind on the part of a bank, or director, officer, or employee thereof, may accrue or result by virtue of a closing authorized by 32-1-562 and 32-1-563.

(2) The provisions of 32-1-561 through 32-1-565 are in addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971; amd. Sec. 42, Ch. 431, L. 1975; R.C.M. 1947, 5-1062.

Cross-References

Bank holidays, 32-1-481.

Transactions on holidays, 32-1-482.

Part 6

Federal Deposit Insurance Corporation

Part Cross-References

Insurance on deposits of public funds, 17-6-102.

32-1-601. Definition of banking institution. The term "banking institution" as used in this part shall be construed to mean any bank, trust company, bank and trust company, stock savings bank, or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: En. Sec. 1, Ch. 197, L. 1937; R.C.M. 1947, 5-1201.

Cross-References

Institutions to which chapter is applicable, 32-1-102.

32-1-602. Banking institutions empowered to receive federal deposit insurance corporation aid. A banking institution may, on the authority of its board of directors or a majority thereof, enter into those contracts, incur those obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators by virtue of those provisions of the Federal Deposit Insurance Act which establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard banking institutions and their depositors. A banking institution may also subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements from time to time adopted by that corporation.

History: **En. Sec. 2, Ch. 197, L. 1937; amd. Sec. 64, Ch. 431, L. 1975; R.C.M. 1947, 5-1202.**

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Investments of financial institutions, 32-1-424.

32-1-603. Appointment of the corporation as agent in liquidation. If a banking institution, the deposits in which are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. sections 1811-1831, is closed on account of inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist it or act for it in the liquidation of that banking institution.

History: **En. Sec. 3, Ch. 197, L. 1937; amd. Sec. 65, Ch. 431, L. 1975; R.C.M. 1947, 5-1203.**

Cross-References

Powers of department on closing bank, 32-1-515.

Further duties of liquidating officer, 32-1-552.

32-1-604. Subrogation of corporation. Whenever any banking institution shall have been closed as aforesaid and said federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the department in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured banks.

History: **En. Sec. 4, Ch. 197, L. 1937; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1204.**

Cross-References

Payment of claims, 32-1-533.

32-1-605. Examinations by the corporation — accepted when. (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination made of it within a reasonable period by the federal deposit insurance corporation, if a signed copy of the examination is furnished to the department. The department may also, in its discretion, accept a report relative to the condition of a banking institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the institution by the department, if a copy of the report is furnished to the department. The department may, in its discretion, disclose to the corporation, or an official or examiner thereof, any information possessed by the department with reference to the conditions or affairs of an insured institution.

(2) The department may furnish to the corporation, or to an official or examiner thereof, a copy or copies of any examinations made of those banking institutions and of any reports made by them.

(3) Nothing in this section limits the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal Deposit Insurance Act or any substitution for it, to comply with the provisions of that act, its substitutions, or the requirements of that corporation relative to examinations and reports or limits the powers of the department with reference to examinations and reports under existing law.

History: En. Sec. 5, Ch. 197, L. 1937; amd. Sec. 66, Ch. 431, L. 1975; R.C.M. 1947, 5-1205.

Cross-References

Examination and supervision by department, 32-1-211.

Special examination defined, 32-1-214.

Special examinations and fees, 32-1-215.

Examination at request of directors, 32-1-216.

Department to examine trusts, 32-1-217.

32-1-606. Closed banking institutions empowered to borrow from the corporation. If a banking institution is closed on account of inability to meet the demands of its depositors or by action of the department or by action of its directors or, in the event of its insolvency or suspension, the department or its agent, with the permission of the court having jurisdiction, may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from it. The department upon the order of a district court of competent jurisdiction may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law.

History: En. Sec. 6, Ch. 197, L. 1937; amd. Sec. 67, Ch. 431, L. 1975; R.C.M. 1947, 5-1206.

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

Power of closed banks to borrow money from governmental agencies, 32-1-507.

Part 7

Uniform Common Trust Act

Part Cross-References

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Trusts for benefit of third persons, Title 72, ch. 23.

32-1-701. Short title. This part may be cited as the "Uniform Common Trust Act".

History: En. Sec. 4, Ch. 64, L. 1955; R.C.M. 1947, 5-1404.

32-1-702. Application. This part shall apply to fiduciary relationships in existence as of July 1, 1955, or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955; R.C.M. 1947, 5-1406.

Cross-References

Agency, Title 28, ch. 10.

Fiduciary security transfers, Title 30, ch. 10, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

32-1-703. Common trust fund allowed. (1) Any bank or trust company qualified to act as fiduciary in this state may establish and administer common trust funds composed of property permitted by law for the investment of trust funds for the purpose of furnishing investments to:

(a) itself as fiduciary;

(b) itself and others as cofiduciaries;

(c) any affiliated bank or trust company, including any foreign affiliated bank or trust company, as fiduciary;

(d) any affiliated bank or trust company, including any foreign affiliated bank or trust company, and others as cofiduciaries; or

(e) any combination of the entities listed in subsections (1)(a) through (1)(d).

(2) Any bank or trust company may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust funds administered by itself or by any affiliated bank or trust company if the investment is not prohibited by the instrument, judgment, decree, order, or statute creating and governing such fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to the investment.

History: En. Sec. 1, Ch. 64, L. 1955; amd. Sec. 68, Ch. 431, L. 1975; R.C.M. 1947, 5-1401; amd. Sec. 1, Ch. 213, L. 1981.

Compiler's Comments

1981 Amendment: Divided the section into subsections; changed "A to "Any" in the first sentence; inserted "and administer" following "establish" and "composed of property permitted by law for the investment of trust funds" in (1); added subsections (1)(c), (1)(d), and (1)(e); substituted "Any bank or trust company" for "It" at the beginning of (2); substituted "funds administered by itself or by any affiliated bank or trust company" for "fund" in the first sentence of (2); inserted "or statute" following "order" in (2); inserted "and governing such" following "creating" in (2); deleted "cofiduciary or" following "consent of its" in (2); deleted the last sentence of the section that read "A bank or trust company, qualified to act as fiduciary in this state, which is not a member of the federal reserve system shall, in operation of the common trust fund, comply with the rules adopted by the department, and the department may adopt rules it considers necessary and proper in the premises."; and made minor changes in phraseology.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Investments of financial institutions, 32-1-424.

Trusts in general, Title 72, ch. 20.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-704. Accounting for trust funds. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds, but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: En. Sec. 2, Ch. 64, L. 1955; R.C.M. 1947, 5-1402.

Cross-References

Trustee accounts, Title 72, ch. 20, part 4.

32-1-705. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 64, L. 1955; R.C.M. 1947, 5-1403.

32-1-706. Common trust funds established. Each common trust fund established hereunder is a separate and distinct entity from the fiduciary relationships participating in the fund. No fiduciary, in administering a participating fiduciary relationship, may be required to make any apportionment or allocation between the principal and income of such relationship different from that made for the common trust fund. No such participating fiduciary relationship or person having an interest in the relationship may have or be considered to have any ownership in any particular property of the common trust fund; but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income; and the ownership of all property of the common trust fund shall be in the trustee of the fund.

History: **En. 5-1407 by Sec. 1, Ch. 271, L. 1977; R.C.M. 1947, 5-1407; amd. Sec. 2, Ch. 213, L. 1981.**

Compiler's Comments

1981 Amendment: Completely rewrote the section. For former version see sec. 1, Ch. 271, L. 1977.

Cross-References

Consolidation or merger of banks, 32-1-371.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-707. Affiliated defined. For purposes of this part, two or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States Internal Revenue Code.

History: **En. Sec. 3, Ch. 213, L. 1981.**

32-1-708. Limited application of insurance law — exemption. (1) Nothing in this part exempts a common trust fund or any fiduciary thereof from the requirements of Title 33 if such common trust fund or fiduciary is used for insurance purposes.

(2) The establishment and maintenance of common trust funds under this part are exempt from the provisions of Title 30, chapter 10.

History: **En. Sec. 4, Ch. 213, L. 1981.**

Part 8

Subsidiary Trust Companies

Part Cross-References

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Conveyance of trust property by court order, Title 72, ch. 22.

Trusts for benefit of third persons, Title 72, ch. 23.

Trusts in relation to real property, Title 72, ch. 24.

32-1-801. Short title. This part may be cited as "The Subsidiary Trust Company Act of 1975".

History: **En. 5-1501 by Sec. 1, Ch. 401, L. 1975; R.C.M. 1947, 5-1501.**

32-1-802. Definitions. As used in this part the following definitions apply:

(1) "Subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more of the purposes described in 32-1-107, except that

a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commercial banking business.

(2) "Affiliated bank", with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of the subsidiary trust company.

(3) "Affiliated bank", with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office located in this state, more than 50% of the stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of such other bank.

(4) "Owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "Main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(6) "Trust office", with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(7) "Trust office", with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in 32-1-804.

(8) "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney-in-fact, and any other similar capacity.

History: En. 5-1502 by Sec. 2, Ch. 401, L. 1975; R.C.M. 1947, 5-1502.

Cross-References

Consolidation or merger of banks, 32-1-371.

Fiduciary defined, 72-1-103.

32-1-803. Organization of subsidiary trust companies. A subsidiary trust company shall be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-322, 32-1-324, 32-1-325, and 32-1-351 through 32-1-356 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

History: En. 5-1503 by Sec. 3, Ch. 401, L. 1975; R.C.M. 1947, 5-1503.

Cross-References
Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-804. Permissible business of subsidiary trust companies. The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under 32-1-107 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

History: En. 5-1504 by Sec. 4, Ch. 401, L. 1975; R.C.M. 1947, 5-1504.

Cross-References
Business corporations — permissible purposes for incorporation, 35-1-107.

32-1-805. Trust offices of subsidiary trust companies. Notwithstanding the provisions of 32-1-372, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities but not elsewhere.

History: En. 5-1505 by Sec. 5, Ch. 401, L. 1975; R.C.M. 1947, 5-1505.

32-1-806. Trust offices of affiliated banks. Notwithstanding the provisions of 32-1-372, a bank having trust powers may be authorized by the department or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities.

History: En. 5-1506 by Sec. 6, Ch. 401, L. 1975; R.C.M. 1947, 5-1506.

Cross-References
Trusts in general, Title 72, ch. 20.

32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subsections, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a cofiduciary, to each such cofiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first such publication to be at least 25 days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of such notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an

order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section), and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

History: En. 5-1507 by Sec. 7, Ch. 401, L. 1975; R.C.M. 1947, 5-1507.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Hearings — notice, 32-1-204.

Trustees, transfer of office prohibited, 72-21-205.

32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank which has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (1)(a) through (1)(e) of 32-1-807.

(2) When any such application has been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such

applicant bank without the necessity of any instrument of transfer or conveyance.

History: En. 5-1508 by Sec. 8, Ch. 401, L. 1975; amd. Sec. 27, Ch. 71, L. 1977; R.C.M. 1947, 5-1508.

Cross-References

Trustees, transfer of office prohibited, 72-21-205.

Conveyance of trust property by court order, Title 72, ch. 22.

Part 9

Removal of Directors or Officers of Financial Institutions

Part Cross-References

Theft, 45-6-301.

Issuing a bad check, 45-6-316.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

32-1-901. Definitions. For purposes of this part, the following definitions shall apply:

(1) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in 32-1-908(2) or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(2) "Director" means the director of the department of commerce.

(3) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1, MCA.

(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

(5) "Board member" means a member of the board of directors of the institution.

History: En. Sec. 1, Ch. 76, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2).

32-1-902. Notice of charges — hearing — cease and desist order — effective date. (1) If the director has reasonable cause to believe that any institution is engaging or has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the director at the request of the institution. Unless the institution appears at the

hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. In the event of such consent or if upon the record made at any such hearing the director finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the director may issue and serve upon the institution an order to cease and desist from any such practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from such practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

(3) A cease and desist order becomes effective at the expiration of 45 days after the service of the order upon the institution, except in the case of an order issued upon consent which is effective at the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated, or set aside by the action of the director or a reviewing court.

History: En. Sec. 2, Ch. 76, L. 1979.

Cross-References

Contested cases — notice, 2-4-601.

Hearings — notice, 32-1-204.

Sale of securities by officer to bank, 32-1-463.

Fraud by director, officer, or employee, 32-1-464.

Overdraft by officer or employee — receiving personal profit from loan, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer or director, 32-1-467.

Removal of directors, officers, or employees, 32-1-468.

Penalty for unlawful hypothecation of property, 32-1-471.

Theft of bank funds by officers or employees, 32-1-473.

32-1-903. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of them without a formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: En. Sec. 3, Ch. 76, L. 1979.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-904. Temporary cease and desist order — grounds for issuance — effective date — injunctive relief. (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1) or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from such violation or practice. Such order shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) of this section remains effective and enforceable until the completion of the administrative proceedings pursuant to such notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order which is issued against the institution after the hearing becomes effective.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction.

History: En. Sec. 4, Ch. 76, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

Service of process upon corporation, 35-1-307.

32-1-905. Notice of intention to remove board member or officer or to prohibit participation — suspension. (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove him from office whenever the director has reasonable cause to believe:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order which has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of such board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, evidenced his personal disability and unfitness to continue as a board member or officer of the institution, and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to such institution, another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, evidenced his personal disability and unfitness to participate in the conduct of the affairs of such institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove such person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as he considers appropriate. The order becomes effective 30 days after service upon the institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent which becomes effective at the time specified therein. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

History: **En. Sec. 5, Ch. 76, L. 1979.**

Cross-References

False statements and entries considered felony, 32-1-236.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Fraud by director, officer, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Theft of bank funds by officers or employees, 32-1-473.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Tampering with public records or information, 45-7-208.

32-1-906. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of them without formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: **En. Sec. 6, Ch. 76, L. 1979.**

Cross-References

Examination and supervision by department, 32-1-211.

Service of process upon corporation, 35-1-307.

32-1-907. Suspension or prohibition effective upon service — stay. (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon such board member, officer, or other person a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) of this section shall remain in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until such time as the director dismisses the charges specified in such notice, or until the order of removal or prohibition which is issued against the board member, officer, or other person becomes effective. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs he has participated.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition.

History: En. Sec. 7, Ch. 76, L. 1979.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Removal of directors, officers, or employees, 32-1-468.

Service of process upon corporation, 35-1-307.

32-1-908. Felony charges — suspension or prohibition. (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. A copy of the notice shall also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at such time as the

judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order shall also be served upon the institution, whereupon the board member or officer shall cease to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from thereafter instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906.

History: En. Sec. 8, Ch. 76, L. 1979.

Cross-References

Hearing — Rules of Evidence, cross-examination, judicial notice, 2-4-612.

False statements and entries considered felony, 32-1-236.

Removal of directors, officers, or employees, 32-1-468.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Filing of information, Title 46, ch. 11, part 2.

32-1-909. Board of directors — lack of quorum — temporary board members. If at any time because of the suspension or removal of one or more board members pursuant to this part the board of directors of an institution has less than a quorum of board members not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the board members not so suspended or removed until such time as there is a quorum of the board members. If all of the board members have been suspended or removed, the director shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until such time as their successors are duly elected and take office.

History: En. Sec. 9, Ch. 76, L. 1979.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Business corporations — quorum of directors — voting requirements, 35-1-405.

Business corporations — vacancies and removal of directors, 35-1-408.

32-1-910. Hearings — decision — review, modification, termination or stay of orders. (1) Any hearing provided for in this part shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing shall be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted to him for final decision, he shall render his decision, which shall include findings of fact upon which his decision is predicated, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to

the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director, at any time, upon such notice and in such manner as he considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court.

History: **En. Sec. 10, Ch. 76, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Judicial review of contested cases, Title 2, ch. 4, part 7.

32-1-911. Notices and orders — manner of service — copies to federal authorities. Any service required or authorized to be made by the director pursuant to this part shall be made upon individual board members and officers by personal service and may be made upon institutions by registered or certified mail or in such other manner reasonably calculated to give actual notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director pursuant to the provisions of this part upon any institution or any board member or officer thereof or other person participating in the conduct of its affairs may also be sent to the appropriate federal supervisory authorities.

History: **En. Sec. 13, Ch. 76, L. 1979.**

Cross-References

Confidentiality — penalties, 32-1-234.

Service of process upon corporation, 35-1-307.

32-1-912. Enforcement of notices or orders. The director may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under this part. The court has jurisdiction to require compliance therewith.

History: **En. Sec. 11, Ch. 76, L. 1979.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Judicial remedies defined, 27-1-101.

32-1-913 through 32-1-920 reserved.

32-1-921. Violation of notice or final order — penalties. Any present or former board member or officer of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the board member, officer, or other person pursuant to 32-1-905, 32-1-907, or 32-1-908 who participates in any manner in the conduct of the affairs of such institution; directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or without the prior written approval of the director, votes for a board member or serves as a board member, officer, or employee of such institution is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

History: **En. Sec. 12, Ch. 76, L. 1979.**

Cross-References

Elections — how conducted, 32-1-323.

Persons previously convicted under banking laws — bank employment, 32-1-462.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 2

BUILDING AND LOAN ASSOCIATIONS

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Chapter Cross-References

Homeowners' loan corporation and housing bonds — investments and security, 7-15-4504, 7-15-4505, 17-6-103, 32-1-424, 32-2-406, 33-2-833, 72-31-102.

Taxation of association, 15-24-801.

Credit Transactions and Relationships, Title 31.

Definition of regulated lender, 31-1-111.

Insurance premium finance companies, Title 33, ch. 14.

Discrimination prohibited in financial transactions, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1

General Provisions

32-2-101. Purpose — definitions. (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and shall be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(d) "Member" means:

(i) a person holding a savings account of a mutual association;

(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;

(iii) a person purchasing property securing a loan or interest therein held by such association; or

(iv) any other person obligated to the association.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.

History: **Ap. p. Sec. 1, Ch. 57, L. 1927; re-en. Sec. 6355.1, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949; amd. Sec. 69, Ch. 431, L. 1975; Sec. 7-101, R.C.M. 1947; Ap. p. Sec. 13, Ch. 57, L. 1927; re-en. Sec. 6355.14, R.C.M. 1935; Sec. 7-115, R.C.M. 1947; R.C.M. 1947, 7-101, 7-115; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 5, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), deleted "mutually" before "operated", deleted "among its members" after "thrift", and deleted "to them" after "loans"; deleted former (2), which read: "The owners of shares in a building and loan association are called stockholders. The members of a building and loan association are its shareholders, stockholders, borrowers, or purchasers of real estate under contract."; and inserted (3)(c) through (3)(h) and (4).

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (4)(b) (now (3)(b)).

Cross-References

Powers and duties of building and loan associations, 32-2-401.

32-2-102. Fees paid into state treasury. All fees provided for in this chapter and paid to the department or secretary of state shall be by them turned in to the state treasury for the credit of the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 27, Ch. 57, L. 1927; amd. Sec. 1, Ch. 10, L. 1931; re-en. Sec. 6355.28, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-129; amd. Sec. 3, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: At end of section, after "credit of", substituted "the state special revenue fund for the use of the department in its examination function" for "the general fund of the state of Montana".

Cross-References

State finance — fund structure, 17-2-102.

32-2-103. Application of chapter. (1) The provisions of this chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact or attempt to transact a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws, or by a declaration of trust or other device or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this chapter shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security.

History: En. Sec. 28, Ch. 57, L. 1927; re-en. Sec. 6355.29, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1977; R.C.M. 1947, 7-130.

Cross-References

Foreign associations — requirements, 32-2-261.

32-2-104. Conformity required. (1) The powers, rights, duties, privileges, and obligations of every association organized and doing business in a form similar to that authorized by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws, and rules of each heretofore made or existing are hereby modified, altered, and amended to conform with the provisions of this chapter, and the same are declared void where the articles of incorporation, bylaws, or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between the association and its shareholders or any one of them or any other person or persons or any valid contract between the shareholders of the association existing on May 1, 1927, shall not be in any way impaired by the provisions of this chapter.

(2) With these exceptions every building and loan association shall possess the powers, rights, duties, and privileges and be subject to the obligations, restrictions, and liabilities conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles of incorporation, bylaws, or rules.

(3) All obligations to the association heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against the association shall be enforced against it as fully and completely as they might have been enforced before.

(4) Except as above set forth, on and after September 7, 1927, no domestic or foreign association engaged as of March 7, 1927, in the business of a building and loan association or a business of like character shall be permitted to conduct that business in this state unless it complies in every respect with the provisions of this chapter.

History: En. Sec. 34, Ch. 57, L. 1927; re-en. Sec. 6355.35, R.C.M. 1935; amd. Sec. 81, Ch. 431, L. 1975; R.C.M. 1947, 7-136.

Cross-References

Business corporations — formation, articles of incorporation, bylaws, Title 35, ch. 1, part 2.

32-2-105. Laws of other states — reciprocity. When by the laws of any other state, territory, or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state, territory, or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions shall be imposed on the associations of such other state, territory, or nation doing or attempting to do a building and loan business or a business of like kind or character in this state and upon their agents herein.

History: En. Sec. 33, Ch. 57, L. 1927; re-en. Sec. 6355.34, R.C.M. 1935; R.C.M. 1947, 7-135.

Cross-References

National bank powers extended to state banks, 32-1-362.

32-2-106. Penalties. (1) It shall be unlawful for any association, whether foreign or domestic and whether citizens of this state or otherwise, to do business or attempt to do business, as defined in this chapter, without having first complied with its provisions and having received a certificate of authority to do business from the department. Any such association violating any of the provisions of this chapter and failing to comply with any of its provisions shall be fined not less than $250 or more than $1,000 for each and every such violation, to be recovered by an action in the name of the state and on collection paid into the state treasury.

(2) Any person or persons, whether citizens of this state or otherwise, who aid or assist any such association to do business contrary to the provisions

of this chapter without having first complied with all of its provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both.

History: **En. Sec. 35, Ch. 57, L. 1927; re-en. Sec. 6355.36, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-137.**

Cross-References

Treasury funds and accounts, Title 17, ch. 2, part 1.

Capital stock requirements — investigation — certificate of incorporation, how issued, 32-2-205.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-2-107. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of a building and loan association is guilty of a felony who:

(1) willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or direct to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department.

History: **En. Sec. 37, Ch. 57, L. 1927; re-en. Sec. 6355.38, R.C.M. 1935; amd. Sec. 83, Ch. 431, L. 1975; amd. Sec. 30, Ch. 71, L. 1977; R.C.M. 1947, 7-139.**

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Department report, 32-2-306.

Reports and examinations by department confidential, 32-2-307.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-2-108. Purchase of obligations of association by officer. No director, officer, agent, or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any such obligation so purchased.

History: **En. Sec. 38, Ch. 57, L. 1927; re-en. Sec. 6355.39, R.C.M. 1935; R.C.M. 1947, 7-140.**

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

32-2-109. Purchase of assets of association by officer. No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any such assets so purchased.

History: En. Sec. 39, Ch. 57, L. 1927; re-en. Sec. 6399.40, R.C.M. 1935; R.C.M. 1947, 7-141.

32-2-110. Payments to be made by building and loan associations. For the credit of the state special revenue fund for the use of the department in its examination function, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee established by the department by rule on or before June 1 of each year. The fees must be set to recover all of the costs of the program of supervision of building and loan associations.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.83, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-909; amd. Sec. 4, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present language for former text that read: "For the credit of the general fund of the state, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

(1) The minimum fee to be paid by any building and loan association shall be the sum of $100.

(2) For the first $5 million of assets, a charge of 15 cents for each $1,000 of assets shall be made.

(3) For the second $5 million of assets, a charge of 10 cents for each $1,000 of assets shall be made.

(4) For assets in excess of $10 million but not exceeding $20 million, a charge of 5 cents for each $1,000 of assets shall be made.

(5) For assets in excess of $20 million but not exceeding $30 million, a charge of 3 cents for each $1,000 of assets shall be made.

(6) For all assets in excess of $30 million, a charge of 2 cents for each $1,000 of assets shall be made."

Cross-References

State finance — fund structure, 17-2-102.

32-2-111. Equality of rights. With the approval of the department, a building and loan association chartered pursuant to the laws of this state may exercise or possess any right, power, privilege, benefit, immunity, or exemption possessed by a federal savings and loan association doing business in this state that is now provided or that may be provided after April 29, 1981, by the laws of the United States or regulations of the federal home loan bank board. This grant is in addition to grants provided in and takes priority over any statute of this state. The department may exercise the discretion granted in this section by issuance of a special order upon written request from any state-chartered building and loan association with respect to any particular item and may grant such request upon such conditions as it shall determine are in the best interest of the members or depositors of the association and of the general public. The department shall require any state-chartered building and loan association seeking such special orders to obtain and maintain insurance of accounts acceptable to the department, excluding alien insurers.

History: En. Sec. 1, Ch. 558, L. 1981.

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 2

Organization and Reorganization

Part Cross-References

Corporation license tax rate and return — banks and savings and loan associations, Title 15, ch. 31, part 7.

32-2-201. Articles of incorporation — contents. Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) if a capital stock association, the aggregate number of shares which the corporation will have authority to issue;

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 57, L. 1927; re-en. Sec. 6355.2, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1949; amd. Sec. 28, Ch. 71, L. 1977; R.C.M. 1947, 7-102; amd. Sec. 2, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In (3), substituted present language for "the amount of its capital stock and the number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of $100."

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Business corporations — incorporators, 35-1-201.

Business corporations — articles of incorporation, 35-1-202.

Business corporations — corporate name, 35-1-301.

Business corporations — registered office and registered agent, 35-1-305.

32-2-202. Certified copy of articles prima facie evidence. A certified copy of any articles of incorporation filed in pursuance of this chapter must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 57, L. 1927; re-en. Sec. 6355.3, R.C.M. 1935; R.C.M. 1947, 7-103.

Cross-References

Contents of writings, recordings, and photographs — requirement of original, Rule 1002, Montana Rules of Evidence (see Title 26, ch. 10).

Business corporations — articles of incorporation, filing, issuance of certificate of incorporation, 35-1-203.

32-2-203. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in pursuance of 32-2-205 or a certificate issued by the department setting forth that any association, domestic or foreign, has fully complied with the provisions of this chapter and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

History: **En. Sec. 4, Ch. 57, L. 1927; re-en. Sec. 6355.4, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-104.**

Cross-References

Quo warranto, Title 27, ch. 28.

Banks and trust companies — filing of certificate and articles of agreement, 32-1-305.

Effect of issuance of certificate of incorporation, 35-1-204.

32-2-204. Bylaws. (1) Contemporaneously with or immediately following the execution of said articles of incorporation provided for in 32-2-201, the incorporators then acting in the capacity of directors shall adopt appropriate bylaws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted.

(2) The bylaws shall be in conformity with the provisions of this chapter and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business.

(3) The bylaws, among other things, shall especially provide for:

(a) the character and method of conducting the business of the association, with rules governing the addition of members, the sale of its shares, the amount of membership fee;

(b) the annual meeting of the shareholders;

(c) the annual election and qualification of directors and the term or period during which the directors shall serve, provided that the term or period for all directors shall not be less than 1 or more than 3 years and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year;

(d) the appointment of officers;

(e) the adoption, ratification, and amendment of the bylaws, which adoption, ratification, and amendment may be made either by the stockholders or board of directors;

(f) the method of voting at such annual meeting; and

(g) the periodical investigation of the business and condition of such association.

(4) No bylaws and no change or amendment thereof shall be effective until first approved by the department, and no association shall commence the transaction of business as such until the bylaws are first approved by the department.

History: **En. Sec. 5, Ch. 57, L. 1927; re-en. Sec. 6355.5, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-105.**

Cross-References

Banks and trust companies — bylaws, 32-1-308.

Business corporations — bylaws, power in directors, contents, 35-1-214.

32-2-205. Investigation — certificate of incorporation, how issued. (1) (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and, in the case of a mutual association, the requirements of 32-2-232 have been complied with or, in the case of a capital stock association, the requirements of 32-2-241 have been complied with, the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

(2) (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete.

History: En. Sec. 6, Ch. 57, L. 1927; re-en. Sec. 6355.6, R.C.M. 1935; amd. Sec. 70, Ch. 431, L. 1975; R.C.M. 1947, 7-106; amd. Sec. 3, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (1) and (2), which read: "(1) The capital stock named in the articles of incorporation refers to the authorized capital stock.

(2) The organization may be completed and business commenced when 5% of the capital stock is subscribed and not less than $2,500 paid in, in cash. That amount must thereafter be maintained."; and in (1)(a), substituted the clause relating to compliance with 32-2-232 or 32-2-241 for "and it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares".

Cross-References

Banks and trust companies — amount of capital, 32-1-307.

Business corporations — effect of issuance of certificate of incorporation, 35-1-204.

32-2-206. Directors — meetings — officers. (1) The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five or more than nine members.

(2) Within 30 days after the corporate existence of an association begins, the directors of the association shall hold an organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws. At the organizational meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The department may extend, by order, the time within which the organizational meeting must be held.

(3) The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this chapter or until their successors are elected and qualified, after which the directors shall be elected by the stockholders of the association in accordance with the provisions of this chapter and the bylaws of the association.

(4) The directors, unless it is otherwise provided by the bylaws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the department their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

History: En. Sec. 7, Ch. 57, L. 1927; re-en. Sec. 6355.7, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-107; (2)En. Sec. 29, Ch. 5, L. 1983.

Cross-References

Banks — board of directors, oath of office, 32-1-322.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-2-207. Removal of directors. No director shall be removed from office except as herein provided or by a vote of the members of a mutual association representing two-thirds of the withdrawable deposits in the association or the stockholders of a capital stock corporation holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in 32-2-209. Meetings of the members or stockholders for this purpose may be called by the president or by a majority of the directors or by stockholders holding not less than 25% of the capital stock.

History: En. Sec. 8, Ch. 57, L. 1927; re-en. Sec. 6355.9, R.C.M. 1935; R.C.M. 1947, 7-109; amd. Sec. 4, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence after "by a vote of the", substituted "members of a mutual association representing . . . or the stockholders of a capital stock corporation" for "stockholders"; and in second sentence, substituted "members or stockholders" for "stockholders".

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors, officers, or employees, 32-2-304.

Business corporations — removal of officers, 35-1-411.

32-2-208. Meetings of members or stockholders. (1) The meetings of the members or stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(2) In its bylaws, such association shall provide for at least one regular meeting of members or stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with 32-2-209. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned to do so by:

(a) members of a mutual association representing at least 25% of the withdrawable deposits of the association; or

(b) stockholders owning at least 25% of the issued stock.

(3) The secretary shall call special meetings in the same manner as provided in 32-2-209.

History: En. Sec. 9, Ch. 57, L. 1927; re-en. Sec. 6355.10, R.C.M. 1935; R.C.M. 1947, 7-110; amd. Sec. 5, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "members or stockholders" for "stockholders" in two places; and inserted (2)(a).

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Business corporations — place and notice of directors' meetings, 35-1-404.

Business corporations — meetings of shareholders, 35-1-501.

32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of the meeting shall be deposited in the post office at the principal place of business of such association, directed to each member or stockholder at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any meeting.

(2) In addition thereto notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication.

(3) In notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting.

(4) All members or stockholders of the association shall be entitled to vote at the meetings in person or by proxy.

History: En. Sec. 10, Ch. 57, L. 1927; re-en. Sec. 6355.11, R.C.M. 1935; R.C.M. 1947, 7-111; amd. Sec. 6, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "member(s) or stockholder(s)" for "member(s)" in two places.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Business corporations — place and notice of directors' meetings, 35-1-404.

Business corporations — notice of shareholders' meetings, 35-1-502.

32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted.

History: En. Sec. 11, Ch. 57, L. 1927; re-en. Sec. 6355.12, R.C.M. 1935; amd. Sec. 29, Ch. 71, L. 1977; R.C.M. 1947, 7-112; amd. Sec. 7, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "member or stockholder" for "stockholder" in three places.

Cross-References

Business corporations — voting of shares — proxies, 35-1-506.

32-2-211. Transfer of stock or account — effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account.

History: En. Sec. 14, Ch. 57, L. 1927; re-en. Sec. 6355.15, R.C.M. 1935; R.C.M. 1947, 7-116; amd. Sec. 8, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), before "stock certificate" inserted "capital"; and inserted (2).

Cross-References

Securities transferable — action for price, 30-8-107.

When transfer to purchaser occurs, 30-8-313.

Banks and trust companies — transfer of stock, 32-1-332.

32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee, or transferee of such shares or account or the legal representatives of the owners of such shares or account, in case of his or her death before the transfer, and also to protect the association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If the affidavit or other evidence or bond is not furnished when required as herein provided, neither the association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

History: En. Sec. 15, Ch. 57, L. 1927; re-en. Sec. 6355.16, R.C.M. 1935; R.C.M. 1947, 7-117; amd. Sec. 9, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In four places after "stock" or "shares", inserted references to savings account; and made minor changes in style.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Suretyship, Title 28, ch. 11, part 4.

Purchaser's right to requisites for registration of transfer, pledge, or release on books, 30-8-316.

32-2-213 through 32-2-220 reserved.

32-2-221. Renumbered 32-2-261 by Code Commissioner, 1983.

32-2-222. Renumbered 32-2-262 by Code Commissioner, 1983.

32-2-223. Renumbered 32-2-263 by Code Commissioner, 1983.

32-2-224. Renumbered 32-2-264 by Code Commissioner, 1983.

32-2-225 through 32-2-230 reserved.

32-2-231. Renumbered 32-2-271 by Code Commissioner, 1983.

32-2-232. Organization of mutual associations. The incorporators of a mutual association shall appoint one of their number as chairman of the incorporators, and he shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in 32-2-233. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the chairman in cash, labor, or services actually performed an aggregate amount of at least $500,000, including that part of the original subscription paid by the chairman, as subscriptions to the savings accounts of the proposed association.

History: **En. Sec. 27, Ch. 5, L. 1983.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

32-2-233. Expense fund for mutual association. (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid in under this chapter. The expense fund shall be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the chairman of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators shall not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after

provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended shall be repaid to the contributors pro rata, after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association shall reflect the expense fund. The contributors to the expense fund shall be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions shall in all respects be considered as savings accounts of the association.

History: En. Sec. 28, Ch. 5, L. 1983.

Cross-References

Business corporations — expenses of organization, 35-1-609.

32-2-234 through 32-2-240 reserved.

32-2-241. Organization of capital stock associations. The incorporators of a capital stock association shall appoint one of their number as chairman of the incorporators, and the chairman shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in 32-2-242. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the chairman, in cash, labor, or services actually performed, the capital of such association. The capital shall be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock shall entitle the holder of the share to one vote. The minimum required capital is $500,000.

History: En. Sec. 30, Ch. 5, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Business corporations — shares, Title 35, ch. 1, part 6.

32-2-242. Capital stock association — surplus fund — verification statement. (1) In addition to the minimum capital required, the subscribers shall pay an amount equal to not less than 25% of the par or initially stated value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses. The minimum capital and surplus may be used for the reserves required by law and as may be permitted by the board of directors.

(2) Prior to the issuance of a certificate by the department, the incorporators of a proposed association shall file with the department a statement in the form and containing supporting data and proof as the department may require. The statement shall verify that the entire capital and paid-in surplus

has been unconditionally paid in and that the funds representing the capital and paid-in surplus, less amounts of the paid-in surplus expended for land, building, supplies, fixtures, equipment, and organization, are on hand.

History: En. Sec. 31, Ch. 5, L. 1983.

32-2-243. Issuance of capital stock. (1) As of the date the corporate existence of a capital stock association begins, the association shall issue such capital stock as necessary to satisfy the minimum capital requirements of 32-2-241 and such additional capital stock as may be approved for issuance by the board of directors up to the amount authorized in the certificate of incorporation. Once the amount of stock authorized in the certificate of incorporation has been issued, no other shares may be issued except as otherwise authorized in this chapter. The capital stock of an association, when issued, shall constitute permanent capital and may not be retired or withdrawn, except as otherwise provided, until all liabilities of the association, including the withdrawal value of all savings accounts, have been satisfied in full and until outstanding capital certificates have been retired.

(2) An association may issue shares of common stock and preferred stock, with or without par value, and such common and preferred stock may be divided into classes and the classes into series.

History: En. Sec. 32, Ch. 5, L. 1983.

Cross-References

Business corporations — authorized shares, 35-1-601.

Business corporations — issuance of shares, 35-1-605.

32-2-244. Restrictions on capital stock. (1) The consideration for the issuance of capital stock shall be paid in cash except for stock issued pursuant to:

(a) the incorporation of the association;

(b) an employee stock option plan;

(c) a plan of merger, consolidation, or conversion from a mutual to a stock association; or

(d) any other type of reorganization that has been approved by the department.

(2) The par value or stated value of stock issued pursuant to subsections (1)(a) through (1)(d) shall be maintained as the permanent capital of the association, and any additional amount paid in shall be credited to paid-in surplus.

(3) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association, and except as otherwise provided by this chapter, such capital stock may not be retired until final liquidation of the association. An association may not reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the department. The department shall withhold its approval if the reduction will cause the par or stated value of outstanding capital stock to be less than the minimum required by this chapter or will result in less than adequate net worth, as the department in its discretion may determine. An association may not retire any part of its capital stock without the approval of the department.

History: En. Sec. 33, Ch. 5, L. 1983.

Cross-References

Business corporations — restriction on transfer of shares, 35-1-617.

32-2-245. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of his stock upon his death. Any such purchase shall be for a price and upon such terms and conditions as may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase his capital stock upon his death may purchase insurance on the life of the stockholder to fund or partially fund such purchase. Any stock purchased under this section may be resold by the association at a price and upon such terms and conditions as the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale.

History: En. Sec. 34, Ch. 5, L. 1983.

Cross-References

Business corporations — restriction on transfer of shares, 35-1-617.

32-2-246 through 32-2-250 reserved.

32-2-251. Mutual and capital stock conversions. (1) Any mutual association may convert to a capital stock association and any capital stock association may convert to a mutual association in accordance with the provisions of this section and 32-2-252 through 32-2-257.

(2) Any applicant seeking to convert its corporate form pursuant to this section and 32-2-252 through 32-2-257 shall first obtain approval of a plan of conversion by a resolution adopted by a two-thirds majority vote of the total number of directors authorized for the association.

History: En. Sec. 35, Ch. 5, L. 1983.

Cross-References

Business corporations — merger or consolidation — approval of shareholders required, 35-1-803.

Business corporations — amendment of articles of incorporation in reorganization proceedings, 35-1-212.

32-2-252. Department approval. (1) Upon approval of a plan of conversion by the board of directors, the plan and the resolution approving it shall be submitted to the department. The department shall approve the plan of conversion after appropriate examination, if it finds that:

(a) the plan of conversion is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and public are adequately protected; and

(c) the converting applicant has complied with the provisions of 32-2-251 through 32-2-257.

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

History: En. Sec. 36, Ch. 5, L. 1983.

32-2-253. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to 32-2-252, the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

History: En. Sec. 37, Ch. 5, L. 1983.

Cross-References

Business corporations — voting of shares — proxies, 35-1-506.

Business corporations — merger or consolidation — approval of shareholders required, 35-1-803.

32-2-254. Conversion of mutual to capital stock association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder must have the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value thereof. Any stock remaining unsubscribed shall,

during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) shall be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts are to be disposed of or retained.

(6) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: En. Sec. 38, Ch. 5, L. 1983.

Cross-References

Business corporations — procedure for merger, consolidation, and share exchange, 35-1-801.

32-2-255. Conversion of capital stock to mutual association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the capital stock form to a mutual form of association:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The conversion plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated.

(3) The plan shall provide for the allocation of voting rights to the holders of savings accounts and the manner in which such rights may be exercised.

(4) The plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: En. Sec. 39, Ch. 5, L. 1983.

Cross-References

Business corporations — procedure for merger, consolidation, and share exchange, 35-1-801.

32-2-256. Issuance of certificate — continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of 32-2-251 through 32-2-257, it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant without any further action, to the same extent as possessed by the converting applicant.

History: En. Sec. 40, Ch. 5, L. 1983.

32-2-257. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

History: En. Sec. 41, Ch. 5, L. 1983.

Cross-References

Business corporations — effect of merger, consolidation, or exchange, 35-1-806.

32-2-258 through 32-2-260 reserved.

32-2-261. Foreign associations — requirements. (1) An association, as defined in 32-2-103, organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department a duly authenticated copy of their charter, articles of incorporation, or articles of agreement and also a statement, verified by oath of the president and secretary of the corporation or managing officials if other than a corporation and duly verified, showing:

(a) the name of the association and the location of its principal office or place of business outside this state and the location of the place of business or principal office in this state;

(b) the names and residences of the officers, trustees, or directors;

(c) the amount of capital stock, if any, and savings liability;

(d) the amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head

and by its secretary, if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state upon all causes of action arising against it in this state and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association.

History: En. Sec. 29, Ch. 57, L. 1927; re-en. Sec. 6355.30, R.C.M. 1935; amd. Sec. 80, Ch. 431, L. 1975; R.C.M. 1947, 7-131; amd. Sec. 10, Ch. 5, L. 1983; MCA 1981, 32-2-221; redes. 32-2-261 by Code Commissioner, 1983.

Compiler's Comments
1983 Amendment: In (1)(c), inserted ", if any, and savings liability".

Cross-References
Laws of other states — reciprocity, 32-2-105.
Business corporations — foreign corporations, Title 35, ch. 1, part 10.

32-2-262. Consent of agent. The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof or of a consent executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

History: En. Sec. 30, Ch. 57, L. 1927; re-en. Sec. 6355.31, R.C.M. 1935; R.C.M. 1947, 7-132; Sec. 32-2-222, MCA 1981; redes. 32-2-262 by Code Commissioner, 1983.

Cross-References
Creation of agency, Title 28, ch. 10, part 2.
Business corporations — registered office and registered agent, 35-1-305.

32-2-263. Contracts void if made before compliance with law. If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent required by this chapter or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof during said time shall be enforceable by them until the foregoing provisions have been complied with.

History: En. Sec. 31, Ch. 57, L. 1927; re-en. Sec. 6355.32, R.C.M. 1935; R.C.M. 1947, 7-133; Sec. 32-2-223, MCA 1981; redes. 32-2-263 by Code Commissioner, 1983.

Cross-References
Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

32-2-264. Shares of stock and savings accounts subject to attachment. The stock or savings accounts of such foreign associations doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

History: En. Sec. 32, Ch. 57, L. 1927; re-en. Sec. 6355.33, R.C.M. 1935; R.C.M. 1947, 7-134; amd. Sec. 11, Ch. 5, L. 1983; MCA 1981, 32-2-224; redes. 32-2-264 by Code Commissioner, 1983.

Compiler's Comments
1983 Amendment: Changed "shares" to "savings accounts".

Cross-References
Prejudgment attachment — corporate stock, 27-18-410.
Business corporations — liability of subscribers and shareholders, 35-1-510.

32-2-265 through 32-2-270 reserved.

32-2-271. Consolidation and transfer — branching prohibited. (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors and ratified by a two-thirds vote of the shares or members owning at least two-thirds of the withdrawable deposits in the association, present and voting in person or by proxy at a special meeting or meetings of the stockholders or members of the respective associations convened for that purpose, upon notice given as provided by law; the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

(3) Insofar as this section limits or reduces the rights, powers, or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to April 14, 1977.

History: (1), (2)En. as Subd. 22, 7-113, by Sec. 1, Ch. 168, L. 1931; repealed by Sec. 4, Ch. 11, L. 1933; re-en. Sec. 1, Ch. 11, L. 1933; Sec. 7-113(22), R.C.M. 1947; amd. and redes. 7-113.2 by Sec. 73, Ch. 431, L. 1975; amd. Sec. 1, Ch. 363, L. 1977; Sec. 7-113.2, R.C.M. 1947; (3)En. 7-113.3 by Sec. 2, Ch. 363, L. 1977; Sec. 7-113.3, R.C.M. 1947; R.C.M. 1947, 7-113.2, 7-113.3; amd. Sec. 12, Ch. 5, L. 1983; MCA 1981, 32-2-231; redes. 32-2-271 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: In second sentence of (1), after "by a two-thirds vote of the shares", inserted "or members owning at least two-thirds of the withdrawable deposits in the association", and substituted "stockholders or members" for "stockholders".

Cross-References

Consolidation or merger of banks, 32-1-371.

Branch bank prohibited — exceptions, 32-1-372.

Laws of other states — reciprocity, 32-2-105.

Credit unions — merger, 32-3-322.

Business corporations — procedure for merger, consolidation, and share exchange, 35-1-801.

Part 3

Department of Commerce Responsibility

Part Cross-References

Special examination of association by Department of Commerce, 32-1-215.

32-2-301. Examinations by department. The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of 10% of the subscribed stock or members holding 10% of the withdrawable deposits of an association file a written application with the department requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this chapter.

History: En. Sec. 23, Ch. 57, L. 1927; re-en. Sec. 6355.24, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1955; amd. Sec. 77, Ch. 431, L. 1975; R.C.M. 1947, 7-125; amd. Sec. 13, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "or members holding 10% of the withdrawable deposits".

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Special examination of association by department, 32-1-215.

32-2-302. Reports and accounts prescribed by department. The department may prescribe and supervise a uniform system of reports and accounting for all associations. The department shall have access to and may compel the production of all books, papers, securities, and moneys of any association under examination. It may administer oaths to and examine the officers and agents of the association and its affairs.

History: En. Sec. 24, Ch. 57, L. 1927; re-en. Sec. 6355.25, R.C.M. 1935; amd. Sec. 78, Ch. 431, L. 1975; R.C.M. 1947, 7-126.

Cross-References

Oaths, Title 1, ch. 6.

Production of documents for inspection, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Banks and trust companies — reports to Department of Commerce, 32-1-231.

32-2-303. Reports of condition — contents — publication. When requested to do so by the department, a building and loan association shall make to the department a report of condition, according to the form which may be prescribed by the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of the association and attested by the signature of at least two of the directors. The report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified and shall be transmitted to the department within 5 days after the receipt of a request or requisition for it from the department and in a form which may be required by the department. It shall be published as soon as possible in a newspaper in the place where the association is established or, if there is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. Proof of publication shall be furnished at the times and in the manner which may be required by the department.

History: En. Sec. 25, Ch. 57, L. 1927; re-en. Sec. 6355.26, R.C.M. 1935; amd. Sec. 79, Ch. 431, L. 1975; R.C.M. 1947, 7-127.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Banks and trust companies — reports to Department of Commerce, 32-1-231.

Banks and trust companies — special reports to Department, 32-1-233.

32-2-304. Removal of directors, officers, or employees. Any director, officer, or employee of any association found by the department after examination to be dishonest shall be removed from office by the board of directors of such association on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them or any of them for recovery of such losses.

History: En. Sec. 26, Ch. 57, L. 1927; re-en. Sec. 6355.27, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-128.

Cross-References

Negligence, 27-1-701, 27-1-702.

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Removal of directors, 32-2-207.

Business corporations — vacancies and removal of directors, 35-1-408.

32-2-305. Department to approve contracts paying income to person other than association — penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement, whereby the membership fee or any other income properly payable to the association, or any part thereof, is payable to an agent or other contracting party or otherwise than to the association or whereby any part of the business of the association or the management or conduct of its affairs or the expense of them is contracted to another, may be entered into or allowed until it has been submitted to the department and by it approved in writing. That contract may not be extended without the department's approval. The contract or the extension of the contract not first approved is void. A person operating under the contract or extension not first approved or taking or receiving income properly payable to the association without approval is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 154, L. 1931; re-en. Sec. 6355.8, R.C.M. 1935; amd. Sec. 71, Ch. 431, L. 1975; R.C.M. 1947, 7-108.

Cross-References

Contracts generally, Title 28, ch. 2 and 3.

Contracts void if made before compliance with law, 32-2-263.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-2-306. Department report. The department shall preserve in permanent form a full record of its proceedings, including a concise statement of each association examined, and it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with those suggestions as it considers expedient. The report shall also include the information contained in the statement required of the association, arranged in tabulated form.

History: En. Sec. 36, Ch. 57, L. 1927; re-en. Sec. 6355.37, R.C.M. 1935; amd. Sec. 82, Ch. 431, L. 1975; R.C.M. 1947, 7-138.

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Annual statements, 32-2-412.

32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of the association shall be removed from office and shall be fined not more than

$500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) Nothing in this section prevents the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of an individual, association, or company be disclosed.

History: **En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Banks and trust companies — confidentiality of reports — penalties, 32-1-234.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Tampering with public records or information, 45-7-208.

32-2-308. Membership in federal home loan bank. (1) An association, the officers or agents thereof, and the department may do anything necessary to enable a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

History: **En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).**

Cross-References

Change from state to national bank, 32-1-361.

Banks allowed to join federal reserve bank, 32-1-373.

32-2-309. Insolvency or impairment of association — powers of department. (1) When it appears to the department that the affairs of a building and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section.

(2) If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association.

(3) Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues, and claims belonging to it and pay the immediate and reasonable expenses of the department's trust.

(4) When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition, the department shall at once notify, in writing, the board of directors

of the association of its decision, giving them 20 days in which to restore the affairs of the association to sound condition.

(5) Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders or members meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition.

(6) If the association is not restored to a sound condition within 20 days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business for the appointment of the department as receiver.

(7) As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this chapter, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name or in the name of the association those legal proceedings it considers expedient for those purposes.

(8) By applying to the district court of the county in which the association is located, or to the judge thereof in chambers, the department may, upon sufficient showing of cause, obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell any of the assets. The sale may be made to stockholders, members, officers, directors, or others interested in the association, on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the association has had 5 days' notice of the application.

History: En. Sec. 48, Ch. 57, L. 1927; re-en. Sec. 6355.49, R.C.M. 1935; amd. Sec. 86, Ch. 431, L. 1975; R.C.M. 1947, 7-150; amd. Sec. 14, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In (5), inserted "or members"; and in (8) after "stockholders", inserted "members,".

Cross-References

Receivers, Title 27, ch. 20.

Insolvency defined, 30-1-201, 31-2-202, 31-2-302, 35-2-102.

Bank placed in Department's possession, 32-1-511.

Insolvent banks — power of Department, 32-1-562.

Voluntary liquidation and settlement, 32-2-431.

Reorganization of associations under liquidation, 32-2-432.

Part 4

Operation and Regulation

Part Cross-References

Deposits of public funds in building and loan associations, Title 17, ch. 6, part 1.

Consumer credit transactions, interest rates, rights and remedies of parties, Title 31.

32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;

(8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;

(9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which no payments have been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;

(10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes but not on farm lands or mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions which may be provided in the articles of incorporation and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 15, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Throughout section, changed "constitution" to "articles of incorporation"; in (6), substituted "issue stock to stockholders and savings certificates to members" for "issue stock to members" and deleted "but an association may not issue preferred stock" from end of subsection; in (7), after "collect from members", deleted "dues on stock and"; in (8), changed "stock credits" to "savings"; in (9), (10), and (13), substituted references to savings certificates, savings, or savings accounts for references to stock or shares; in (9), changed "stockholders" to "members"; and in (17), substituted "make distribution of all interest and dividends earned" for "make a semiannual distribution of all the earnings".

Cross-References

Investments in certain federally guaranteed bonds authorized, 7-15-4505.

Commercial bank defined, 32-1-105.

Savings bank defined, 32-1-106.

Trust company defined, 32-1-107.

Building and loan associations — purpose — definitions, 32-2-101.

Bylaws, 32-2-204.

Capital stock requirements, 32-2-205.

Business corporations — effect of issuance of certificate of incorporation, 35-1-204.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-402. Limit on interest and penalties. (1) Interest not exceeding the lawful contract rate may be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate percent of the dividend declared on the same unpaid stock payments.

(2) An association may not charge or collect from a stockholder, member, or borrower any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed $5 may be charged for payments more than 15 days late.

(3) An officer, agent, or employee of an association collecting or attempting to collect a penalty, fine, or premium of any kind, except the late payment penalty, or interest at a rate higher than provided in the note or other evidence of debt or in this chapter is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 5, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

1981 Amendment: Deleted first sentence of (1), which read: "The combined total of the amounts paid to an association for interest, commission, bonus, discount, and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest, principal payments, or both, from the time those interest payments are due."

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty is specified, 46-18-212.

32-2-403. Statement of interest rates — canceling loans. (1) Where the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(2) A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

32-2-404. Savings account withdrawal. (1) No charge or fee, except as provided in this section, may be made against a member who withdraws his savings, after having given 30 days' notice of the withdrawal. No fine of any description may be made upon the value of that savings account because of the withdrawal. A member who withdraws his savings or whose savings account is matured is entitled to receive all sums paid in and all interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the amount of his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than $100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 16, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In four places, changed "stock" to "savings"; in second sentence of (1), substituted "upon the value of that savings account" for "upon the par value of that stock or upon the declared dividends"; and in third sentence of (1), changed "stock" to "savings account", "dues" to "sums", "dividends" to "interest", and "par value of each share of stock" to "amount of his deposit".

Cross-References

Credit unions — members who leave field, 32-3-308.

32-2-405. Pledging association assets. (1) The assets and securities of an association may not be pledged to secure its borrowed money or for any other purpose without the consent of the department. However, if the department determines that it is advisable to pledge assets in order that funds may be secured, it may authorize the pledging. The margin of security pledged may not exceed 25% of the funds so borrowed except when funds are borrowed from the federal home loan bank.

(2) An association may borrow money from the federal home loan bank upon the terms required by the federal home loan bank, may execute the promissory note of the corporation for the loan, and may pledge any of the assets of the corporation to secure the repayment of the loan, with interest, in accordance with the Federal Home Loan Bank Act and the rules adopted under it.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Security for deposit of public funds, 17-6-103.

Banks and trust companies — extent assets may be pledged, 32-1-411.

Membership in federal home loan bank, 32-2-308.

Business corporations — mortgage or pledge of assets, 35-1-808.

32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate which has been sold under contract, including suburban homes but not including farm lands or mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount so invested may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property so purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: (1), (2)En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; Sec. 7-113, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 7-113(part), 35-142(part); amd. Sec. 6, Ch. 36, L. 1979; amd. Sec. 1, Ch. 154, L. 1979.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

Investments of financial institutions, 32-1-424.

Credit unions — investment of funds, 32-3-701.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-2-407. Real estate loans limited by congress. Building and loan associations and savings and loan associations, organized and operating under the laws of the state of Montana, may, in addition to any loan or investment permitted prior to July 1, 1963, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-113.1; amd. Sec. 2, Ch. 154, L. 1979.

Cross-References

Authority of state banks to make real estate loans, 32-1-430.

Limitation on real estate loans by state banks, 32-1-431.

National Housing Act loans, Title 32, ch. 2, part 5.

32-2-408. Bonds of officers, agents, and employees. The board of directors of every building and loan association shall require that all officers, agents, and employees of building and loan associations whose duties include the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties shall be subject to approval by the department. The bonds shall be in a form which shall be provided and approved by the department, and the bonds shall be approved by the president of the building and loan association and his action reported to the board of directors. All bonds required by this section shall be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given.

History: En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933; re-en. Sec. 6355.17, R.C.M. 1935; amd. Sec. 74, Ch. 431, L. 1975; R.C.M. 1947, 7-118.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Banks and trust companies — bonding of employees, 32-1-461.

32-2-409. Employment of agents — licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless he is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless he is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last 12 months, and other information the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

(a) misrepresentation;

(b) conviction in any court for violation of the criminal statutes;

(c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of $2.

History: En. Sec. 17, Ch. 57, L. 1927; re-en. Sec. 6355.18, R.C.M. 1935; amd. Sec. 75, Ch. 431, L. 1975; R.C.M. 1947, 7-119.

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Reports and accounts prescribed by department, 32-2-302.

32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the savings deposits, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount.

History: En. Sec. 18, Ch. 57, L. 1927; re-en. Sec. 6355.19, R.C.M. 1935; R.C.M. 1947, 7-120; amd. Sec. 17, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence, changed "stock" to "savings deposits"; and in last sentence after "5% of", substituted "the savings deposits" for "the book value of the stock as aforesaid".

Cross-References

Banks and trust companies — reserve requirements, 32-1-455.

32-2-411. Payment of expenses — losses — dividends — reserve fund. (1) All expenses of any such association shall be paid out of the earnings only, in such manner as may be provided in its bylaws. The charges incident to a loan, if paid by the borrower, shall be deemed a part of the current expenses.

(2) Associations so desiring may annually or semiannually credit to a reserve fund the net earnings remaining after the payment of expenses and dividends and after crediting the contingent fund with the amount required by law, provided the amount so credited to the reserve fund in any fiscal year shall not exceed 1% of the book value of the outstanding stock. The reserve fund shall not exceed 5% of the book value of the outstanding stock. The reserve fund so created may be used for the payment of dividends, provided:

(a) the amount of the reserve fund so used shall not exceed 1% of the book value of the outstanding stock in any year; and

(b) that should the contingent fund of an association become exhausted, then no part of the reserve fund may be used for the payment of dividends and in the discretion of such association such reserve fund or the part thereof it shall deem necessary shall be credited to the contingent fund.

(3) Dividends shall be declared semiannually from the net earnings of the association and shall be paid or credited to all stockholders at such time and in such manner as provided in the constitution and bylaws.

(4) Losses in excess of the contingent fund and reserve fund shall be assessed pro rata in the same proportion and manner on all stockholders, to the extent only of their stock credits in such association.

History: En. Sec. 19, Ch. 57, L. 1927; amd. Sec. 1, Ch. 167, L. 1931; re-en. Sec. 6355.20, R.C.M. 1935; R.C.M. 1947, 7-121.

Cross-References

Banks and trust companies — dividends, surplus, losses, and bad debts, 32-1-452.

Banks and trust companies — reserve requirements, 32-1-455.

Shares of stock subject to attachment, 32-2-264.

Business corporations — distributions to shareholders, 35-1-711.

32-2-412. Annual statements. Every building and loan association doing business in this state shall annually, on June 30 or within 20 days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30, showing its financial condition at the end of said year.

History: En. Sec. 21, Ch. 57, L. 1927; re-en. Sec. 6355.22, R.C.M. 1935; R.C.M. 1947, 7-123.

Cross-References

Department report, 32-2-306.

32-2-413. Form of statement — where filed. The statement shall be in such form and contain such information as may be prescribed by the department. It shall be sworn to by the secretary of such association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the department within 20 days after the close of the fiscal year, and such an abstract thereof as the department may require shall be posted for 60 days in the office or meeting place of such association and also published once in the newspaper published in the town in which the association is located or, if no newspaper is published in the town in which association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the department.

History: En. Sec. 22, Ch. 57, L. 1927; re-en. Sec. 6355.23, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-124.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Reports and accounts prescribed by department, 32-2-302.

Department report, 32-2-306.

32-2-414. Interest or commissions not included in profits. Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association shall not be included in calculation of its profits.

History: En. Sec. 40, Ch. 57, L. 1927; re-en. Sec. 6355.41, R.C.M. 1935; R.C.M. 1947, 7-142.

Cross-References

Reports of condition — contents — publication, 32-2-303.

32-2-415. Limitation on loans. The total liabilities of any person, partnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a partnership, the liabilities of the several members thereof, shall at no time exceed 20% of the amount of the assets of such association.

History: En. Sec. 41, Ch. 57, L. 1927; re-en. Sec. 6355.42, R.C.M. 1935; R.C.M. 1947, 7-143.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Credit unions — loan limit, 32-3-603.

32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder.

History: En. Sec. 42, Ch. 57, L. 1927; re-en. Sec. 6355.43, R.C.M. 1935; R.C.M. 1947, 7-144; amd. Sec. 18, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, inserted "savings certificates and"; and at end of section, inserted "or certificate holder".

Cross-References

Joint deposits in investment companies, 32-1-442.

Credit unions — joint ownership of shares, 32-3-505.

Joint interest defined, 70-1-307.

32-2-417. Trust — payment. Whenever any shares of stock shall be purchased or savings deposits made in any building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased or savings deposits made.

History: En. Sec. 43, Ch. 57, L. 1927; re-en. Sec. 6355.44, R.C.M. 1935; R.C.M. 1947, 7-145; amd. Sec. 19, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning and at end of section, inserted "or savings deposits made".

Cross-References

Trust deposits — payment, 32-1-443.

Credit unions — trust accounts, 32-3-506.

Trusts in general, Title 72, ch. 20.

32-2-418. Savings held by minor. Whenever any savings accounts in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the savings accounts shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such savings accounts to the association.

History: En. Sec. 44, Ch. 57, L. 1927; re-en. Sed. 6355.45, R.C.M. 1935; R.C.M. 1947, 7-146; amd. Sec. 20, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In three places, changed "shares of stock" to "savings accounts".

Cross-References

Banks and trust companies — deposit in name of minor, 32-1-444.

Credit unions — minor's accounts, 32-3-504.

Parental control over property of child, 40-6-232.

Enforcement of minor's rights, 41-1-202.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-419. Checking accounts prohibited. No building and loan association shall carry any demand, commercial, or checking account or receive any sum of money on deposit.

History: En. Sec. 46, Ch. 57, L. 1927; re-en. Sec. 6355.47, R.C.M. 1935; R.C.M. 1947, 7-148.

Cross-References

U.C.C. — "check" defined, 30-3-104.

32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944. (1) All building and loan associations organized under the laws of the state of Montana are hereby empowered to make any loan which is guaranteed in whole or in part by the United States or any federal agency or federal instrumentality thereof under the Servicemen's Readjustment Act of 1944 or any amendment thereto, enacted by the congress of the United States, provided such loan shall be secured by either a first or second mortgage on real estate.

(2) Insofar as the provisions of this section are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this section shall control.

History: En. Secs. 1, 2, Ch. 35, L. 1945; R.C.M. 1947, 7-158, 7-159.

32-2-421 through 32-2-430 reserved.

32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the members or stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the members or stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, shareholders, or any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and the savings accounts in the association upon which no loans have been made, the same to be paid pro rata, then to pay off the capital stock in the association, pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by and shall be under the supervision of the department.

History: En. Sec. 47, Ch. 57, L. 1927; re-en. Sec. 6355.48, R.C.M. 1935; amd. Sec. 85, Ch. 431, L. 1975; R.C.M. 1947, 7-149; amd. Sec. 21, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In two places in (1), before "stockholders" inserted "members or"; in (2), inserted ", shareholders,"; and in (3), substituted "pay off first the indebtedness and the savings accounts" for "pay off first the indebtedness and then the stock" and inserted the final clause relating to payoff of capital stock.

Cross-References

Banks and trust companies — dissolution, closing, and liquidation, Title 32, ch. 1, part 5.

Meetings of stockholders and directors, 32-2-208.

Examinations by department, 32-2-301.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting.

History: En. Sec. 1, Ch. 4, L. 1935; re-en. Sec. 6355.50, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-151; amd. Sec. 22, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In two places after "members" inserted "or stockholders"; in (2) after "outstanding stock" inserted "in a capital stock association or withdrawable deposits in a mutual association".

Cross-References

Meetings of stockholders and directors, 32-2-208.

32-2-433 through 32-2-440 reserved.

32-2-441. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department a copy of the charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

History: En. Sec. 1, Ch. 174, L. 1935; re-en. Sec. 6374.8, R.C.M. 1935; amd. Sec. 31, Ch. 71, L. 1977; R.C.M. 1947, 7-156; amd. Sec. 23, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: Throughout section, after "shareholders" inserted "or members".

Cross-References

Change from state to national bank, 32-1-361.

Meetings of stockholders and directors, 32-2-208.

32-2-442. Effect of conversion of association — powers and privileges. At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a state association. Said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the federal savings and loan association shall be merely a continuation of the state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

History: **En. Sec. 2, Ch. 174, L. 1935; re-en. Sec. 6374.9, R.C.M. 1935; R.C.M. 1947, 7-157.**

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 5

National Housing Act Loans

32-2-501. Associations empowered to make loans on securities authorized by National Housing Act. Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of congress cited as the "National Housing Act", approved by the president on June 27, 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and members' accounts, and other contracts as are now, or may hereafter be, authorized or provided for by said National Housing Act and any amendments thereof duly passed and approved.

History: **En. Sec. 1, Ch. 38, L. 1935; re-en. Sec. 6356.1, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1943; R.C.M. 1947, 7-153; amd. Sec. 24, Ch. 5, L. 1983.**

Compiler's Comments

1983 Amendment: Near end of section, substituted "members' accounts" for "stockholders' accounts".

Cross-References

Investments of financial institutions, 32-1-424.

Investments, 32-2-406.

Real estate loans limited by Congress, 32-2-407.

32-2-502. Transactions exempt from operation of state laws. All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and members' accounts, and other contracts made pursuant to the powers granted in 32-2-501 through 32-2-503 shall be exempt from the operation and application of the general statutes of this state in conflict with said National Housing Act and the regulations issued thereunder.

History: **En. Sec. 2, Ch. 38, L. 1935; re-en. Sec. 6356.2, R.C.M. 1935; R.C.M. 1947, 7-154; amd. Sec. 25, Ch. 5, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "members' accounts" for "stockholders' accounts".

Cross-References

Contracts, Title 28, ch. 2 and 3.

Loans of money — interest rates, Title 31, ch. 1, part 1.

32-2-503. Application of sections. The provisions of 32-2-501 through 32-2-503 shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of members, and other contracts made in connection with and incidental to loans secured by mortgages and to advances of credit, insured or to be insured, and accounts, insured or to be insured, under the provisions of said National Housing Act and amendments thereof duly passed and approved.

History: En. Sec. 3, Ch. 38, L. 1935; re-en. Sec. 6356.3, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1943; R.C.M. 1947, 7-155; amd. Sec. 26, Ch. 5, L. 1983.

Compiler's Comments

1983 Amendment: In middle of section, changed "stockholders" to "members".

CHAPTER 3

CREDIT UNIONS

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Chapter Cross-References

Credit Transactions and Relationships, Title 31.

Insurance premium finance companies, Title 33, ch. 14.

Discrimination prohibited in financial transactions, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1

General Provisions

32-3-101. Short title. This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

32-3-102. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

Cross-References

Trust company defined — purposes for which may be formed, 32-1-107.

Investment company defined — purposes for which may be formed, 32-1-108.

Building and loan associations — purpose, 32-2-101.

32-3-103. Use of name exclusive. With the exception of a credit union organized under the provisions of this chapter or of any other credit union act or an association of credit unions or a recognized chapter thereof, any person, corporation, partnership, or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than $500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Business corporations — corporate name, 35-1-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of commerce.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union shall be afforded an opportunity for a hearing according to Title 2, chapter

4, part 6. The purpose of the hearing shall be to determine whether a compelling reason exists for disapproval of the additional office.

History: En. 14-607 by Sec. 7, Ch. 38, L. 1975; R.C.M. 1947, 14-607; amd. Sec. 1, Ch. 140, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 140 added subsections (3), (4), and (5).

Chapter 274 substituted "department of commerce" for "department of business regulation" in (1).

Cross-References

Change of registered office or registered agent, 35-1-306.

32-3-105. Fiscal year. The fiscal year of each credit union organized under this chapter shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38, L. 1975; R.C.M. 1947, 14-608.

32-3-106. Instruction in schools. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state.

History: En. 14-675 by Sec. 75, Ch. 38, L. 1975; R.C.M. 1947, 14-675.

Cross-References

Superintendent of Public Instruction — supervision of schools — powers and duties, 20-3-106.

Instructional assistance by Superintendent of Public Instruction, 20-7-114.

Part 2

Regulation

Part Cross-References

Special examination of credit unions by Department of Commerce, 32-1-215.

32-3-201. Director of the department of commerce. (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this chapter.

(2) The director may prescribe rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees so collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall, from time to time, issue rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

History: En. 14-609 by Sec. 9, Ch. 38, L. 1975; R.C.M. 1947, 14-609; amd. Sec. 5, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: In (2) inserted second sentence relating to state special revenue fund.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Casualty insurance, Title 33, ch. 23.

32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of $5 for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

History: En. 14-610 by Sec. 10, Ch. 38, L. 1975; R.C.M. 1947, 14-610.

Cross-References

Duties of supervisory committee, 32-3-417.

32-3-203. Examinations. (1) The department of commerce shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

History: En. 14-611 by Sec. 11, Ch. 38, L. 1975; R.C.M. 1947, 14-611; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Building and loan associations — examinations by department, 32-2-301.

32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

History: En. 14-612 by Sec. 12, Ch. 38, L. 1975; R.C.M. 1947, 14-612.

Cross-References

Destruction of bank records, 32-1-491.

Reproduction of bank records — admissibility in evidence, 32-1-492.

Building and loan associations — reports and accounts prescribed by department, 32-2-302.

32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of commerce shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors shall be given notice by certified or registered mail of such suspension, which notice shall include a list of the reasons for such suspension and/or a list of the specific violations of this chapter.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

History: En. 14-664 by Sec. 64, Ch. 38, L. 1975; R.C.M. 1947, 14-664; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

Cross-References

Injunctions, Title 27, ch. 19.

Dissolution, closing, and liquidation of banks, Title 32, ch. 1, part 5.

Insolvency or impairment of building and loan association — powers of department, 32-2-309.

Share insurance, 32-3-611.

32-3-206. Authorized activities of credit unions. Upon written application to the director, a credit union may engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include, but not by way of limitation, the power to do any act and own, possess, and carry as assets property of such character including stocks, bonds, or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in 32-3-304. The director shall approve an activity if he finds that it fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the director disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676; amd. Sec. 1, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: At beginning, substituted "Upon written application to the director, a credit union may engage" for "The director may authorize any credit union to engage"; and substituted third and fourth sentences for former third sentence that read "Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state".

Cross-References

National bank powers extended to state banks, 32-1-362.

Powers and duties of building and loan associations, 32-2-401.

Conversion of charter, 32-3-323.

Part 3

Organization, Membership, and Dissolution

32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union shall be organized under this chapter for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which shall be not less than $5; and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the same in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of commerce.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of commerce. The director may issue

a certificate of approval if the articles and the bylaws are in conformity with this chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within 30 days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

History: En. 14-603 by Sec. 3, Ch. 38, L. 1975; R.C.M. 1947, 14-603; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (4) and (5).

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Formation of banks and trust companies, Title 32, ch. 1, part 3.

Organization of building and loan association, Title 32, ch. 2, part 2.

Election or appointment of officials, 32-3-403.

Business corporations — articles of incorporation, 35-1-202.

Business corporations — articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of commerce shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

History: En. 14-604 by Sec. 4, Ch. 38, L. 1975; R.C.M. 1947, 14-604; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Banks and trust companies — bylaws, 32-1-308.

Building and loan associations — bylaws, 32-2-204.

Business corporations — bylaws — power in directors — contents, 35-1-214.

32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of commerce who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, for which no fee may be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

History: En. 14-605 by Sec. 5, Ch. 38, L. 1975; amd. Sec. 32, Ch. 71, L. 1977; R.C.M. 1947, 14-605; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

Cross-References

Business corporations — power to amend articles of incorporation, 35-1-206.

Business corporations — procedure to amend articles of incorporation, 35-1-207.

32-3-304. Membership defined. (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests or groups within a well-defined neighborhood, community, or rural district or employees of a common employer and members of the immediate family of such persons.

History: **En. 14-615 by Sec. 15, Ch. 38, L. 1975; R.C.M. 1947, 14-615; amd. Sec. 1, Ch. 107, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "or groups within a well-defined neighborhood, community, or rural district" in the middle of (2); deleted "provided that mere residence in a community may not establish a common bond of association or interest" at the end of (2).

Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-305. Societies — associations. (1) Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals.

(2) No loan may be made to any member society, partnership, or corporation in an aggregate amount that is in excess of 5% of the credit union's shares and retained earnings. Total loans to member societies, partnerships, and corporations is limited to an aggregate amount of 15% of the credit union's shares and retained earnings.

History: **En. 14-616 by Sec. 16, Ch. 38, L. 1975; R.C.M. 1947, 14-616; amd. Sec. 2, Ch. 522, L. 1985.**

Compiler's Comments

1985 Amendment: In (1) at end, after "individuals", deleted "but may not borrow in excess of their shareholdings"; and inserted (2).

32-3-306. Other credit unions. Any credit union organized under this chapter may permit membership of any other credit union organized under this chapter or other laws.

History: **En. 14-617 by Sec. 17, Ch. 38, L. 1975; R.C.M. 1947, 14-617.**

Cross-References

Central credit unions, Title 32, ch. 3, part 8.

32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of commerce, for whom credit union services are otherwise unavailable.

History: **En. 14-618 by Sec. 18, Ch. 38, L. 1975; R.C.M. 1947, 14-618; amd. Sec. 2, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Director of the Department of Commerce, 32-3-201.

32-3-308. Members who leave field. Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

History: En. 14-619 by Sec. 19, Ch. 38, L. 1975; R.C.M. 1947, 14-619.

Cross-References

Duties of directors, 32-3-412.

32-3-309. Liability of members. The members of the credit union shall not be personally or individually liable for the payment of its debts.

History: En. 14-620 by Sec. 20, Ch. 38, L. 1975; R.C.M. 1947, 14-620.

Cross-References

Banks and trust companies — stockholders' liability, 32-1-333.

Building and loan associations — shares of stock subject to attachment, 32-2-264.

Business corporations — liability of subscribers and shareholders, 35-1-510.

32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

History: En. 14-621 by Sec. 21, Ch. 38, L. 1975; R.C.M. 1947, 14-621.

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

Business corporations — meetings of shareholders, 35-1-501.

Minors and adults defined, 41-1-101.

32-3-311 through 32-3-320 reserved.

32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of commerce thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making

any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, he shall execute a certificate of dissolution on a form prescribed by the department and file the same with the department, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved.

History: En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977; R.C.M. 1947, 14-665; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (3).

Cross-References

Banks and trust companies — dissolution and disincorporation, 32-1-501.

Building and loan associations — voluntary liquidation and settlement, 32-2-431.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

Survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

32-3-322. Merger. (1) Any credit union may, with the approval of the director of the department of commerce and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law.

History: En. 14-666 by Sec. 66, Ch. 38, L. 1975; R.C.M. 1947, 14-666; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in subsection (1).

Cross-References

Consolidation or merger of banks, 32-1-371.

Building and loan associations — consolidation and transfer, 32-2-271.

Business corporations — procedure for merger, 35-1-801.

32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of commerce.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of commerce and file proof of such compliance with said director.

History: En. 14-667 by Sec. 67, Ch. 38, L. 1975; R.C.M. 1947, 14-667; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in two places.

Cross-References

Change from state to national bank, 32-1-361.

Conversion into federal savings and loan associations, 32-2-441.

Authorized activities of credit unions, 32-3-206.

Part 4

Operation and Officers

Part Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-401. General powers. A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter same;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the director;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse moneys in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for such services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of such accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision thereof.

History: En. 14-613 by Sec. 13, Ch. 38, L. 1975; R.C.M. 1947, 14-613; amd. Sec. 3, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: In (16) at end, after "services", deleted "but not including checking account services"; and inserted (21) and (22).

Cross-References

Loans of money — interest rates, Title 31, ch. 1, part 1.

Powers and duties of building and loan associations, 32-2-401.

General powers of business corporations, 35-1-108.

32-3-402. Incidental powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state, including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38, L. 1975; R.C.M. 1947, 14-614.

Cross-References

Business corporations — general powers, 35-1-108.

32-3-403. Election or appointment of officials. (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for such terms as the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for such terms as the bylaws provide by the members of the credit union at the annual meeting of the members or provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417, are the responsibility of the board of directors.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38, L. 1975; R.C.M. 1947, 14-622; amd. Sec. 4, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: In (2) inserted second and third sentences.

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

Organization procedures, 32-3-301.
Meetings of members, 32-3-310.
Business corporations — officers — appointment — powers and duties, 35-1-410.

32-3-404. Record of board and committee members. Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union shall be filed with the department of commerce on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38, L. 1975; R.C.M. 1947, 14-623; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Records, 32-3-204.

32-3-405. Vacancies. The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38, L. 1975; R.C.M. 1947, 14-624.

Cross-References

Banks and trust companies — board of directors — qualifications, tenure, and vacancies, 32-1-322.

Business corporations — vacancies and removal of directors, 35-1-408.

32-3-406. Compensation of officials. No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident, and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38, L. 1975; R.C.M. 1947, 14-625.

Cross-References

Liability insurance for officers, 32-3-610.

Life insurance, Title 33, ch. 20.

Disability insurance, Title 33, ch. 22.

32-3-407. Conflicts of interest. No director, committee member, officer, agent, or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: En. 14-626 by Sec. 26, Ch. 38, L. 1975; R.C.M. 1947, 14-626.

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Purchase of obligation of bank by officer, 32-1-466.

Loans by bank to managing officer or director, 32-1-467.

Purchase of obligations of building and loan association by officer, 32-2-108.

Purchase of assets of building and loan association by officer, 32-2-109.

32-3-408. Executive officers. (1) At their organization meeting and within 15 days following each annual meeting of the members, the directors shall elect from their own number:

(a) an executive officer, who may be designated as chairman of the board or president;
(b) a vice-chairman of the board or one or more vice-presidents;
(c) a treasurer; and
(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected shall be the executive officers of the corporation.

(4) The terms of the officers shall be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers shall be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title shall be either president or general manager or president and general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

History: En. 14-627 by Sec. 27, Ch. 38, L. 1975; R.C.M. 1947, 14-627.

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

Business corporations — executive and other committees, 35-1-407.

32-3-409. Authority of directors. The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

History: En. 14-628 by Sec. 28, Ch. 38, L. 1975; R.C.M. 1947, 14-628.

Cross-References

Records, 32-3-204.

Authorized activities of credit unions, 32-3-206.

32-3-410. Executive committee. From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

History: En. 14-629 by Sec. 29, Ch. 38, L. 1975; R.C.M. 1947, 14-629.

Cross-References

Business corporations — executive and other committees, 35-1-407.

32-3-411. Meetings of directors. The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

History: En. 14-630 by Sec. 30, Ch. 38, L. 1975; R.C.M. 1947, 14-630.

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

Business corporations — place and notice of directors' meetings, 35-1-404.

32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval

or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

History: En. 14-631 by Sec. 31, Ch. 38, L. 1975; amd. Sec. 45, Ch. 359, L. 1977; R.C.M. 1947, 14-631; amd. Sec. 5, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near end, after "committee", deleted "attorney-at-law" and after "agent", inserted ending sentence.

Cross-References

Indemnity, Title 28, ch. 11, part 3.
Legal interest, 31-1-106.
Interest rate allowed by agreement, 31-1-107.
Banks — bonding of employees, 32-1-461.
Membership defined, 32-3-304.
Members who leave field, 32-3-308.
Dividends, 32-3-502.
Loans and insurance, Title 32, ch. 3, part 6.
Investment of funds, 32-3-701.

32-3-413. Authority of credit committee. The credit committee shall have the general supervision of all loans to members.

History: En. 14-632 by Sec. 32, Ch. 38, L. 1975; R.C.M. 1947, 14-632.

Cross-References

Loans — purposes, terms, and interest rate, 32-3-601.

Loan application, 32-3-602.

Loan limit, 32-3-603.

32-3-414. Meeting of credit committee. The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

History: En. 14-633 by Sec. 33, Ch. 38, L. 1975; R.C.M. 1947, 14-633.

Cross-References

Loan application, 32-3-602.

32-3-415. Loan officers. (1) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38, L. 1975; R.C.M. 1947, 14-634.

Cross-References

Loan application, 32-3-602.

32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38, L. 1975; R.C.M. 1947, 14-635.

Cross-References

Loan application, 32-3-602.

Loan limit, 32-3-603.

32-3-417. Duties of supervisory committee or board. (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years.

History: En. 14-636 by Sec. 36, Ch. 38, L. 1975; R.C.M. 1947, 14-636; amd. Sec. 6, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: In (1) and (2) near beginning, after "The", inserted "board of directors or".

Cross-References

Reports, 32-3-202.

Examinations, 32-3-203.

Records, 32-3-204.

32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than 7 or more than 21 days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this chapter, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38, L. 1975; R.C.M. 1947, 14-637.

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Building and loan associations — removal of directors, 32-2-207.

Business corporations — removal of officers, 35-1-411.

32-3-419. Calling of special meeting. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

History: En. 14-638 by Sec. 38, Ch. 38, L. 1975; R.C.M. 1947, 14-638.

Cross-References

Meetings of members, 32-3-310.

Part 5

Shares and Accounts

32-3-501. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in such manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

History: En. 14-639 by Sec. 39, Ch. 38, L. 1975; R.C.M. 1947, 14-639.

Cross-References

Uncertificated securities defined, 30-8-102.

Organization procedure, 32-3-301.

Form of articles and bylaws, 32-3-302.

General powers of credit unions, 32-3-401.

32-3-502. Dividends. (1) At such intervals and for such periods as the board of directors may authorize and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month.

History: En. 14-640 by Sec. 40, Ch. 38, L. 1975; R.C.M. 1947, 14-640.

Cross-References

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Duties of directors, 32-3-412.

Business corporations — distributions to shareholders, 35-1-711.

32-3-503. Thrift accounts. Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

History: En. 14-641 by Sec. 41, Ch. 38, L. 1975; R.C.M. 1947, 14-641.

Cross-References

Duties of directors, 32-3-412.

32-3-504. Minors' accounts. Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: En. 14-642 by Sec. 42, Ch. 38, L. 1975; R.C.M. 1947, 14-642.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Banks and trust companies — deposit in name of minor, 32-1-444.

Building and loan associations — shares held by minor, 32-2-418.

Power of minors to contract, Title 41, ch. 1, part 3.

32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

History: En. 14-643 by Sec. 43, Ch. 38, L. 1975; R.C.M. 1947, 14-643.

Cross-References

Banks and trust companies — joint deposits — survivorship, 32-1-442.

Building and loan associations — joint ownership, 32-2-416.

Joint tenancy — how created, 70-20-105.

32-3-506. Trust accounts. (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor; but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary; and the credit union shall be under no obligation to see the application of such payment.

(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

History: En. 14-644 by Sec. 44, Ch. 38, L. 1975; R.C.M. 1947, 14-644.

Cross-References

Banks and trust companies — trust deposits — payment, 32-1-443.

Building and loan associations — trust — payment, 32-2-417.

Trusts in general, Title 72, ch. 20.

Trustees' Powers Act, Title 72, ch. 21.

Trusts for benefit of third persons, Title 72, ch. 23.

Uniform Principal and Income Act, Title 72, ch. 25.

32-3-507. Liens. The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint, or trust account for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38, L. 1975; R.C.M. 1947, 14-645.

Cross-References

Liens, Title 71, ch. 3.

32-3-508. Dormant accounts. (1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

History: En. 14-646 by Sec. 46, Ch. 38, L. 1975; R.C.M. 1947, 14-646.

Cross-References

Uniform Disposition of Unclaimed Property Act, Title 70, ch. 9, parts 1 through 3.

32-3-509. Reduction in shares. (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: En. 14-647 by Sec. 47, Ch. 38, L. 1975; R.C.M. 1947, 14-647.

Cross-References

Building and loan associations — funds for contingent losses, 32-2-410.

Meetings of members, 32-3-310.

32-3-510. Withdrawals. Shares may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

History: En. Sec. 8, Ch. 522, L. 1985.

Part 6

Loans and Insurance

32-3-601. Loans — purposes, terms. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves.

History: En. 14-648 by Sec. 48, Ch. 38, L. 1975; R.C.M. 1947, 14-648; amd. Sec. 6, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 8, Ch. 275, L. 1981.)

1981 Amendment: Deleted "at rates of interest not exceeding 1 ¼% per month on the unpaid monthly balances" after "approves" at the end of the section.

Cross-References

Loans of money — what constitutes, 31-1-101.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

32-3-602. Loan application. Every application for a loan shall be made in writing upon a form which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired and the security, if any, offered. Each loan shall be evidenced by a written document.

History: En. 14-649 by Sec. 49, Ch. 38, L. 1975; R.C.M. 1947, 14-649.

Cross-References

Authority of credit committee, 32-3-413.

32-3-603. Loan limit. No loan shall be made to any member in an aggregate amount in excess of 10% of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38, L. 1975; R.C.M. 1947, 14-650.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Duties of directors, 32-3-412.

32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this chapter. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this chapter and the bylaws.

History: En. 14-651 by Sec. 51, Ch. 38, L. 1975; R.C.M. 1947, 14-651.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Banks — giving security for deposit prohibited — exceptions, 32-1-447.

Authority of credit committee, 32-3-413.

Loan officers, 32-3-415.

Credit manager, 32-3-416.

32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38, L. 1975; R.C.M. 1947, 14-652.

Cross-References

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-3-606. Line of credit. Upon their own motion or upon application by a member, the credit committee or credit manager may approve a line of credit in advance, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38, L. 1975; R.C.M. 1947, 14-653.

Cross-References

U.C.C. — letters of credit, Title 30, ch. 5.

32-3-607. Other loan programs. (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

History: En. 14-654 by Sec. 54, Ch. 38, L. 1975; R.C.M. 1947, 14-654.

Cross-References

Guaranteed student loan program, Title 20, ch. 26, part 11.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

Building and loan associations allowed to make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) the loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) any such loan or aggregate of loans to any one director or committee member which exceeds $2,500 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, except when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds $2,500, approval of the board of directors is required.

History: En. 14-655 by Sec. 55, Ch. 38, L. 1975; R.C.M. 1947, 14-655.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Banks and trust companies — loans to managing officer or director, 32-1-467.

Building and loan associations — limitation on loans, 32-2-415.

32-3-609. Insurance for members. A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

History: En. 14-656 by Sec. 56, Ch. 38, L. 1975; R.C.M. 1947, 14-656.

Cross-References

General powers of credit union, 32-3-401.

Authorization of insurers — certificate of authority required, 33-2-101.

32-3-610. Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: En. 14-657 by Sec. 57, Ch. 38, L. 1975; R.C.M. 1947, 14-657.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Suretyship insurance, Title 33, ch. 26.

32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department.

(2) No credit union may begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the director of the department of commerce.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of commerce shall make available reports of condition and examination reports to the administrator of the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of such administrators or officials. The director may appoint the administrator of the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38, L. 1975; R.C.M. 1947, 14-658; amd. Sec. 7, Ch. 36, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 7, Ch. 522, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "Act" inserted remainder of sentence; in (2) after "Act", inserted "or under an approved insurance plan"; and in (4), in first sentence, near middle after "administration", inserted "or any official of an insurance plan", at end after "administrators", inserted "or officials", and in second sentence, after "administration", inserted "or any official of an insurance plan".

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in subsections (2) and (4).

Cross-References

Federal Deposit Insurance Corporation — definition of banking institution, 32-1-601.

Part 7

Investments and Reserves

32-3-701. Investment of funds. Funds not used in loans to members may be invested in:

(1) securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) loans to or in shares or deposits of other credit unions;

(5) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to 2% of the assets of the credit union.

History: En. 14-659 by Sec. 59, Ch. 38, L. 1975; R.C.M. 1947, 14-659.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Banks and trust companies — demand or time deposits, 32-1-445.

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Authorized activities of credit unions, 32-3-206.

General powers of credit unions, 32-3-401.

Central credit unions, Title 32, ch. 3, part 8.

Cooperative associations — shares, dividends, and distributions, Title 35, ch. 15, part 4.

Trusts in general, Title 72, ch. 20.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-3-702. Makeup of regular reserve. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then

(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then

(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.

(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.

History: En. 14-660 by Sec. 60, Ch. 38, L. 1975; R.C.M. 1947, 14-660.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Building and loan associations — fund for contingent losses, 32-2-410.

32-3-703. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of commerce.

History: En. 14-661 by Sec. 61, Ch. 38, L. 1975; R.C.M. 1947, 14-661; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 219, L. 1983.

Compiler's Comments

1983 Amendment: After "losses" substituted "including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses" for "except those"; and changed "shall" to "may".

1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References

Director of the Department of Commerce, 32-3-201.

Liquidation, 32-3-321.

Reduction in shares, 32-3-509.

32-3-704. Risk assets defined. For the purpose of establishing the reserves required, all assets except the following shall be considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets which are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments which deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) furniture and equipment; and

(12) land and buildings.

History: En. 14-662 by Sec. 62, Ch. 38, L. 1975; R.C.M. 1947, 14-662.

Cross-References

Guaranteed student loan program, Title 20, ch. 26, part 11.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-705. Special reserves. In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of commerce, in any special case, to be necessary for that purpose.

History: En. 14-663 by Sec. 63, Ch. 38, L. 1975; R.C.M. 1947, 14-663; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (2).

Cross-References

Director of the Department of Commerce, 32-3-201.

Authority of directors, 32-3-409.

Duties of directors, 32-3-412.

Part 8

Central Credit Unions

32-3-801. Organization. Any central credit union may be organized and operated under this chapter and subject to all such provisions not inconsistent with this chapter. Such credit union shall use the term "central" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38, L. 1975; R.C.M. 1947, 14-668.

32-3-802. Membership. Membership in such central credit union may include, but not be limited to:

(1) credit unions organized and operating under this chapter or under any other credit union law;

(2) officers, directors, committee members, and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state;

(3) organizations and associations of those persons or organizations enumerated in subsections (1) and (2);

(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above.

History: En. 14-669 by Sec. 69, Ch. 38, L. 1975; R.C.M. 1947, 14-669.

Cross-References

Credit union membership defined, 32-3-304.

Other credit unions, 32-3-306.

Liquidation of credit unions, 32-3-321.

General powers of credit unions, 32-3-401.

32-3-803. Voting representative. Each credit union becoming a member of such central credit union may designate one person to be its voting representative in the central credit union, which person shall be designated by the board of directors of the member credit union. Such voting representative shall be eligible to hold office in the central credit union as if such person were himself a member of the central credit union.

History: En. 14-670 by Sec. 70, Ch. 38, L. 1975; R.C.M. 1947, 14-670.

Cross-References

Duties of directors of credit unions, 32-3-412.

32-3-804. Additional rights and powers. (1) A central credit union shall have all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this section, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(2) A central credit union may make loans to other credit unions, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors:

(a) elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act;

(b) borrow from any source an amount not in excess of three times its total assets after deduction of the notes payable account; however, with prior written approval of the director of the department of commerce, the credit union may exceed such limitation; and

(c) make loans to any member in an aggregate amount not in excess of 20% of the central credit union's total assets.

History: En. 14-671 by Sec. 71, Ch. 38, L. 1975; amd. Sec. 1, Ch. 111, L. 1977; R.C.M. 1947, 14-671; amd. Sec. 1, Ch. 233, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (5)(b).

Cross-References

General powers of credit unions, 32-3-401.

Investment of funds, 32-3-701.

Part 9

Taxation

Part Cross-References

Taxation of corporations, Title 15, ch. 31.

32-3-901. Taxation. All credit unions organized under this or any other credit union law shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: En. 14-672 by Sec. 72, Ch. 38, L. 1975; R.C.M. 1947, 14-672.

Cross-References

Conversion of charter by credit union, 32-3-323.

32-3-902. Stock transfer taxes. The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38, L. 1975; R.C.M. 1947, 14-673.

Cross-References

U.C.C. — investment securities — duty of issuer to register transfer, 30-8-401.

Securities regulation — tax obligations, 30-10-410.

Shares, 32-3-501.

32-3-903. Effect of participation in government programs. The participation by a credit union in any government program providing unemployment, social security, old-age pension, or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38, L. 1975; R.C.M. 1947, 14-674.

CHAPTER 4

DEVELOPMENT CORPORATION ACT

Part 1 — General Provisions

Section

32-4-101. Definitions.
32-4-102. Purpose.
32-4-103. Credit of state not pledged.
32-4-104. Application of corporation law.

Part 2 — Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation.
32-4-202. Duration.
32-4-203. Certificate of incorporation.
32-4-204. Effect of failure to commence business.
32-4-205. Amendment of articles of incorporation.
32-4-206. Board of directors.
32-4-207. First meeting of corporation.
32-4-208. Stock ownership and limitations.

Part 3 — Operation and Regulation

32-4-301. Powers of stockholders and members.
32-4-302. Membership — limitation and apportionment of loans by members.
32-4-303. Withdrawal of membership.
32-4-304. Surplus.
32-4-305. Deposit of funds.
32-4-306. Control — supervision — reports.

Chapter Cross-References

Credit Transactions and Relationships, Title 31.

Corporations, Partnerships, and Associations, Title 35.

Part 1

General Provisions

32-4-101. Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "corporation"—a Montana development corporation created under this chapter;

(2) "financial institution"—any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(3) "member"—any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter;

(4) "board of directors"—the board of directors of a corporation created under this chapter;

(5) "loan limit"—for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter.

History: **En. Sec. 2, Ch. 128, L. 1969; R.C.M. 1947, 15-2602; amd. Sec. 1, Ch. 320, L. 1983.**

Compiler's Comments

1983 Amendment: In (1) changed name to "Montana development corporation" from "Montana development credit corporation".

Cross-References

Definition of regulated lender, 31-1-111.

32-4-102. Purpose. (1) The purposes of the corporation shall be to:

(a) promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens;

(b) encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;

(c) stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state;

(d) cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and

(e) provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(2) In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 35 the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: **En. Sec. 1, Ch. 128, L. 1969; R.C.M. 1947, 15-2601.**

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

Secondary industry and commercial development, Title 90, ch. 5.

32-4-103. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: **En. Sec. 17, Ch. 128, L. 1969; R.C.M. 1947, 15-2617.**

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Obligations of Housing Board — credit of state not pledged, 90-6-123.

32-4-104. Application of corporation law. The provisions of Title 35 shall apply to the corporation insofar as they may be applicable and not inconsistent with this chapter.

History: En. Sec. 18, Ch. 128, L. 1969; R.C.M. 1947, 15-2618.

Part 2

Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation. Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided may be incorporated in the following manner:

(1) Such persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided that no loan to the corporation may be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency or city, state, or federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part thereof or interest therein of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder thereof exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price thereof;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of commerce and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency, whether state, federal, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of

incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter.

History: En. Sec. 3, Ch. 128, L. 1969; amd. Sec. 34, Ch. 71, L. 1977; R.C.M. 1947, 15-2603; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 2, Ch. 320, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a) changed name requirement to "Development Corporation of Montana" from "Development Credit Corporation of Montana".

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1)(c)(xii).

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Permissible purposes for incorporation, 35-1-107.

Incorporators, 35-1-201.

Business corporations — articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Corporate name, 35-1-301.

Corporations — merger, consolidation, share exchange and sale of assets, Title 35, ch. 1, part 8.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

32-4-202. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969; R.C.M. 1947, 15-2615.

Cross-References

General powers of corporations, 35-1-108.

32-4-203. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this chapter, as set forth in 32-4-201.

History: En. Sec. 4, Ch. 128, L. 1969; R.C.M. 1947, 15-2604.

Cross-References

Articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Effect of issuance of certificate of incorporation, 35-1-204.

32-4-204. Effect of failure to commence business. If a corporation organized pursuant to this chapter shall fail to begin business within 5 years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969; R.C.M. 1947, 15-2616.

32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled, provided:

(a) that no amendment which is inconsistent with the general purposes expressed herein or which eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 shall be made without amendment of this chapter; and

(b) that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; affects a member's right to withdraw from membership as provided in 32-4-303; or affects a member's voting rights as provided in 32-4-301 shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine them. If he finds that they conform to the requirements of this chapter, he shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state, and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969; R.C.M. 1947, 15-2605.

Cross-References

Power to amend articles of incorporation, 35-1-206.

Procedure to amend articles of incorporation, 35-1-207.

Class voting on amendments, 35-1-208.

Articles of amendment — content, 35-1-209.

Filing of articles of amendment and issuance of certificate of amendment, 35-1-210.

Effect of certificate of amendment, 35-1-211.

32-4-206. Board of directors. (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of such number, not less than nine, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation.

(3) The directors need not be stockholders or members in the corporation.

(4) The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969; R.C.M. 1947, 15-2606.

Cross-References

Board of directors, 35-1-401.

32-4-207. First meeting of corporation. (1) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least 5 days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969; R.C.M. 1947, 15-2608.

Cross-References

Organization meeting of directors, 35-1-205.

Bylaws — power in directors — contents, 35-1-214.

32-4-208. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) all domestic corporations organized for the purpose of carrying on business within this state, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) all financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the

approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed 10% of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: **En. Sec. 9, Ch. 128, L. 1969; R.C.M. 1947, 15-2609.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Investments of financial institutions, 32-1-424.

Investments of building and loan associations, 32-2-406.

Investment of funds of credit unions, 32-3-701.

Shareholders, Title 35, ch. 1, part 5.

Shares, Title 35, ch. 1, part 6.

Part 3

Operation and Regulation

32-4-301. Powers of stockholders and members. (1) The stockholders and the members of the corporation shall have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;

(b) to make, amend, and repeal bylaws;

(c) to amend the articles of incorporation as provided in 32-4-205;

(d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

(2) As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000 shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional $1,000 which such member is authorized to have outstanding on loans to the corporation at any one time as determined under 32-4-302(3)(b).

History: **En. Sec. 7, Ch. 128, L. 1969; R.C.M. 1947, 15-2607.**

Cross-References

Shareholders, Title 35, ch. 1, part 5.

32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member:

(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) ¼ of 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) The board of directors, on the request of any financial institution applying for membership and with the approval of one-half of the members that are the same type of financial institution as the applicant, may authorize a different loan limit than that set forth in subsection (3)(b).

(5) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(6) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest

at a rate of not less than ¼ of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the time.

History: En. Sec. 10, Ch. 128, L. 1969; R.C.M. 1947, 15-2610; amd. Sec. 3, Ch. 320, L. 1983; amd. Sec. 1, Ch. 90, L. 1985.

Compiler's Comments

1985 Amendment: In (3)(b)(ii) reduced loan limitation from 1% to ¼ of 1%.

1983 Amendment: In (3)(b), substituted "on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member" for "as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership"; inserted (4); near middle of (6) reduced interest rate from "not less than ½ of 1%" in excess of prevailing prime rate to "not less than ¼ of 1%" in excess of prevailing prime rate; and at end of (6) substituted "time" for "date of issuance thereof on unsecured commercial loans".

Cross-References

Interest rate limitation exemption — regulated lenders, 31-1-112.

Limitations on loans of banks, 32-1-432.

Limitation on loans of building and loan associations, 32-2-415.

Credit unions — membership defined, 32-3-304.

Credit unions — loans, 32-3-601 through 32-3-604.

Board of directors, 32-4-206.

32-4-303. Withdrawal of membership. (1) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation 2 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

(2) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969; R.C.M. 1947, 15-2611.

Cross-References

Building and loan associations — stock withdrawal, 32-2-404.

Credit unions — members who leave field, 32-3-308.

Amendment of articles of incorporation, 32-4-205.

32-4-304. Surplus. Each year the corporation shall set apart as earned surplus not less than 10% of its net earnings for the preceding fiscal year until such surplus shall be equal in value to 50% of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969; R.C.M. 1947, 15-2612; amd. Sec. 4, Ch. 320, L. 1983.

Compiler's Comments

1983 Amendment: Near end of first sentence decreased total required amount of surplus from "100%" of outstanding capital stock to "50%" of outstanding capital stock.

32-4-305. Deposit of funds. (1) The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(2) The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969; R.C.M. 1947, 15-2613.

Cross-References
Board of directors, 32-4-206.

32-4-306. Control — supervision — reports. The corporation is subject to the examination of the department of commerce and shall make reports of its condition not less than annually to that department, which in turn shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35.

History: En. Sec. 14, Ch. 128, L. 1969; amd. Sec. 87, Ch. 431, L. 1975; R.C.M. 1947, 15-2614; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department of commerce" for "department of business regulation".

Cross-References
Department of Commerce, Title 2, ch. 15, part 18.

Amendment of articles of incorporation, 32-4-205.

Business corporations — annual reports, Title 35, ch. 1, part 11.

CHAPTER 5

CONSUMER LOAN BUSINESSES

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Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Credit Transactions and Relationships, Title 31.

Insurance premium finance companies, Title 33, ch. 14.

Part 1

General Provisions

Part Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-101. Short title. This chapter may be cited as the "Montana Consumer Loan Act".

History: En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202; amd. Sec. 1, Ch. 216, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 424, L. 1981; amd. Sec. 1, Ch. 140, L. 1983.

Compiler's Comments

1983 Amendment: In (5), after "loans" deleted "of $25,000 or less, which amount is subject to change pursuant to the provisions of 32-5-104,".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of business regulation" in (4).

Chapter 424 inserted "which amount is subject to change pursuant to the provisions of 32-5-104" in the middle of (5).

Cross-References

Loan of money — what constitutes, 31-1-101.

32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(4) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204; amd. Sec. 2, Ch. 216, L. 1979; amd. Sec. 2, Ch. 424, L. 1981; amd. Sec. 1, Ch. 103, L. 1983; amd. Sec. 2, Ch. 140, L. 1983; amd. Sec. 1, Ch. 168, L. 1985; amd. Sec. 2, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 168 in (1) at beginning of second sentence, deleted "Except as provided in subsection (2), a person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or", and after "pawnbroker" deleted "or any person who shall extend credit in connection with the sale of a commodity shall", and inserted "may".

Chapter 406 in (1) before exception at end of first sentence, deleted "which in the aggregate are greater than those provided by 31-1-107(1)".

1983 Amendments: Chapter 103, near middle of (1), inserted exception referring to (2); and inserted (2).

Chapter 140, in (1) near beginning of first sentence, substituted "any amount" for "amounts of $25,000 or less"; and deleted former (4), which read: "The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

1981 Amendment: Added subsection (4) (deleted by Ch. 140, L. 1983. For text see 1983 amendment note above.)

Cross-References

Assignment of wages to be considered a loan, 31-1-308.

Interest pawnbrokers may receive, 31-1-401.

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Credit unions — loan limit, 32-3-603.

Development credit corporation — membership — limitation and apportionment of loans by members, 32-4-302.

32-5-104. Adjustment of dollar amounts. (1) From time to time the dollar amounts in this chapter designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S.

City Average, All Items, 1967 = 100, compiled by the bureau of labor statistics, department of labor, and hereafter referred to as the index. The index for December 1980 shall be the reference base index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10% or more, but:

(a) the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts appearing in this chapter on October 1, 1981;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) the dollar amounts may not be reduced below the amounts appearing in this chapter on October 1, 1981.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States bureau of labor statistics. If the index is superseded, the index referred to in this section shall be the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall adopt a rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

History: **En. Sec. 9, Ch. 424, L. 1981.**

Part 2

Licensure Requirements

32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid by the department into the state special revenue fund for the use of the department in its supervision function.

(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104.

History: Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206; amd. Sec. 3, Ch. 216, L. 1979; amd. Sec. 3, Ch. 424, L. 1981; amd. Sec. 3, Ch. 140, L. 1983; amd. Sec. 6, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: In (3) substituted present language for former text that read: "All moneys collected under the authority of this chapter shall be paid into the state treasury by the department."

1983 Amendment: In (2)(a), after "$1,000" deleted "but not exceeding $25,000"; and in (4), substituted "amount of $1,000" for "amounts of $1,000 and $25,000".

1981 Amendment: Added subsection (4).

Cross-References

State finance — fund structure, 17-2-102.

Discrimination in licensing prohibited, 49-3-204.

32-5-202. Issuance or denial of license. (1) Within 30 days after an application for license is filed with the department together with the required fees, the department shall issue the license, if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this chapter, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207.

Cross-References
Discrimination in licensing prohibited, 49-3-204.

32-5-203. Conduct of other business in same office. A licensee may conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in or in association or conjunction therewith unless the department shall find, after a hearing, that the other business is of such nature that such conduct tends to conceal evasion of this chapter or of the rules made hereunder and shall order such licensee in writing to desist from such conduct.

History: En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208.

Cross-References
Wage brokers, Title 31, ch. 1, part 3.
Pawnbrokers, Title 31, ch. 1, part 4.

32-5-204. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of $125 for each license held as a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209.

32-5-205. Surrender of license. Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

History: En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

Cross-References
Survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

32-5-206. Termination of license not to affect preexisting contract. No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

History: En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

Cross-References
Contracts in general, Title 28, ch. 2 and 3.

32-5-207. Revocation and suspension of license. The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223.

Cross-References
Department — powers and duties, 32-5-401.

32-5-208. Reinstatement. The department may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the department in refusing originally to issue such license. In any case where the license has been revoked for cause, no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

History: **En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224.**

Cross-References

Department — powers and duties, 32-5-401.

Part 3

Operation of Business — Restrictions and Requirements

32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee or holder of a supplementary license hereunder may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in (1) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(5) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

History: Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210; amd. Sec. 6, Ch. 216, L. 1979; amd. Sec. 4, Ch. 424, L. 1981; amd. Sec. 2, Ch. 135, L. 1983; amd. Sec. 4, Ch. 140, L. 1983; amd. Sec. 2, Ch. 168, L. 1985; amd. Sec. 3, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 168 deleted former (4) that read: "On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90"; in (6) deleted former third sentence that read: "All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges"; and corrected internal subsection references.

Chapter 406 in (1) substituted present language for "Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $500;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $500 but not exceeding $1,000"; deleted former (2) that read: "The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $12 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500"; in (2) after "(1)" deleted "and (2)"; deleted former (4); inserted (7); and deleted former (9) through (13) that read: "(9) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection (12).

(10) On any loan of money exceeding $7,500 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding. Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is the balance due after refund or credit is given to the borrower pursuant to subsection (5).

(11) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(12) The provisions of subsections (5) and (6) do not apply to loans made under subsections (9) through (11).

(13) The amounts of $90, $500, $1,000, and $7,500 in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts".

1983 Amendments: Chapter 135, near beginning of (5)(a) (now (3)(a)), inserted "for a period of not more than 61 months"; inserted (5)(b) (now (3)(b)).

Chapter 140, in (10) (now deleted), after "$7,500" deleted "but not exceeding $25,000"; and in (13) (now deleted), after "$7,500" deleted "$25,000"; and made minor phraseology change.

1981 Amendment: In (1)(a) (now deleted), increased the amount from $300 to $500; in (1)(b) (now deleted), increased from $300 to $500 and from $500 to $1,000; deleted "(c) $12 per year per $100 on that part of the principal amount of the loan in excess of $500 but not exceeding $1,000"; in (2) (now deleted), increased from $10 to $12; in (7) (now (5)(a)), substituted "include in the principal amount of any loan" for "collect from the borrower" in the first sentence and added (7)(b) (now (5)(b)); in the last sentence of (8) (now (6)), substituted "and" for "or" before "received", deleted "the contract of loan shall be void and" before "the licensee", deleted "principal" after "receive any", and deleted "or recompense whatsoever" after "charges"; in (10) (now deleted), increased from 1 ½% to 2%; and added (13) (now deleted).

Cross-References

Legal interest, 31-1-106.
Interest rate allowed by agreement, 31-1-107.
Penalty for usury — action to recover excessive interest, 31-1-108.
Limitation of Rule of 78ths, 31-1-113.
Finance charge limitation, 31-1-241.
License application and fees, 32-5-201.
Penalties, 32-5-406.

32-5-302. Installment payment — contract period. (1) No licensee may enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

(3) The amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211; amd. Sec. 5, Ch. 424, L. 1981.

Compiler's Comments

1981 Amendment: Added "or" at the end of (1)(b); increased from $2,000 to $2,500 in (1)(c); deleted subsection (1)(d) relating to repayment for amounts between $2,000 and $2,500; and added subsection (3).

Cross-References

Contracts — time of performance, Title 28, ch. 3, part 6.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, the disclosures required by the Federal Consumer Credit Protection Act, a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301(5);

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 6, Ch. 424, L. 1981; amd. Sec. 4, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendment: In (7) and (9) changed the subsection references in 32-5-301.

1981 Amendment: Inserted "the disclosures required by the Federal Consumer Credit Protection Act" in the first sentence after "to one of them"; and made minor changes in punctuation.

Cross-References

Requirements of retail installment contracts, 31-1-231.

32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time such payment is made;

(2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any such system containing information equivalent to that required on a loan ledger or card.

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

History: **En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 1, Ch. 84, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "in cash" after "payment made" in (1); deleted "of the loan" at the end of the first sentence of (2); added the last two sentences in (2) relating to data processing receipts.

Cross-References

Notice and receipt of payment, 31-1-236.

32-5-305. Confessions of judgment — incomplete instruments forbidden. No licensee shall:

(1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges and in which blanks are left to be filled in after execution. However, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; or

(3) take any instrument in which blanks are left to be filled in after the loan is made.

History: **En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213.**

Cross-References

Confession of judgment, Title 27, ch. 9.

Requirements of retail installment contracts, 31-1-231.

32-5-306. Insurance. (1) No insurance of any kind shall be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan except as hereinafter provided.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion thereof attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker, or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this chapter.

(6) A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214; amd. Sec. 4, Ch. 216, L. 1979; amd. Sec. 7, Ch. 424, L. 1981; amd. Sec. 5, Ch. 140, L. 1983.

Compiler's Comments

1983 Amendment: In (4), deleted last sentence, which read: "If any loan shall include amounts advanced for insurance premiums and charges, such loan shall not in any event exceed $25,000."; and in (7), substituted "amount of $300" for "amounts of $300 and $25,000".

1981 Amendment: Added subsection (7).

Cross-References

Retail installment contracts — insurance, 31-1-233.

Insurance, Title 33.

32-5-307. Records to be kept. Each licensee shall keep in each licensed office such books, accounts, and records as the department shall require and as are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated thereunder. The licensee shall preserve such records for at least 2 years after making the final entry on any loan recorded thereon.

History: En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217.

Cross-References

Department — powers and duties — adoption of rules, 32-5-401.

Access to records — witnesses, 32-5-404.

32-5-308. Annual report. (1) A licensee shall annually before April 15 file a report for the preceding calendar year with the department.

(2) The report shall give information with respect to the financial condition of the licensee and shall include:

(a) the name and address of the licensee;

(b) balance sheets at the beginning and end of the calendar year;

(c) a statement of income and expenses;

(d) a reconciliation of surplus or net earnings with the balance sheets;

(e) a schedule of assets used in the consumer loan business;

(f) an analysis of charges, size of loans made, and types of security on loans;

(g) an analysis of suits and foreclosures; and

(h) other relevant information the department may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by the licensee in this state.

(3) The report shall be made under oath and be in a form prescribed by the department, which shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218.

Cross-References

Annual examinations — cost, 32-5-403.

32-5-309. Advertising — limitations. No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

History: En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

When advertising as bank prohibited, 32-1-402.

Montana Electronic Funds Transfer Act — advertising restrictions, 32-6-307.

32-5-310. Wage assignments — limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this chapter.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of such loan and the amount due and unpaid thereon;

(c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220.

Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-311 through 32-5-320 reserved.

32-5-321. Deferral charge permitted — nature of deferral charge. Notwithstanding the provisions of 32-5-301 and 32-5-302, if the contract so provides, a consumer loan licensee may, at any time, grant a deferral and make deferral charges as provided in 32-5-322. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the deferral period. The deferral period is that period during which no installment is scheduled to be paid by reason of the deferral.

History: En. Sec. 1, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-322. Deferral charge — rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under 32-5-301(3) as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to 32-5-301(3).

History: En. Sec. 2, Ch. 341, L. 1979; amd. Sec. 3, Ch. 168, L. 1985; amd. Sec. 5, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 168 corrected internal subsection references in two places.

Chapter 406 changed "subsection (5) of 32-5-301" to "32-5-301(3)" in two places.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-323. Deferral prohibited when default charge has been collected. No installment payment upon which a default charge has been collected may be deferred unless the default charge is refunded to the borrower or credited to the deferral charge.

History: En. Sec. 3, Ch. 341, L. 1979.

32-5-324. Collection of deferral charge. A deferral charge may be collected at the time it accrues or any time thereafter.

History: En. Sec. 4, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

Part 4

Enforcement

32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.

(2) All rules adopted under this chapter are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203.

Cross-References

Revocation and suspension of license, 32-5-207.

32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee; or

(2) a person whom the department has reason to believe is violating or is about to violate this chapter.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215; amd. Sec. 5, Ch. 216, L. 1979; amd. Sec. 8, Ch. 424, L. 1981; amd. Sec. 6, Ch. 140, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (1)(b), which read: "a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of $25,000 or less; or"; and deleted former (2), which read: "The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

1981 Amendment: Renumbered subsections (1) through (3) as (1)(a) through (1)(c) (now (1) and (2)); added subsection (2) (now deleted).

Cross-References

Consumer Protection Act — investigative authority, 30-14-114.

Records to be kept, 32-5-307.

Advertising — limitations, 32-5-309.

32-5-403. Annual examinations — cost. (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at a rate to be established by the department by rule. Such fees shall be established to recover all of the costs of the supervision program of the department. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216; amd. Sec. 1, Ch. 368, L. 1983; amd. Sec. 7, Ch. 600, L. 1985.

Compiler's Comments

1985 Amendment: In (2) at end of first sentence, after "charged at", substituted "a rate to be established by the department by rule" for "the rate of $200 per person per day required to conduct the examinations of the respective licensees"; and inserted second sentence of (2) relating to recovery of costs.

1983 Amendment: In middle of (2), substituted "at the rate of $200 per person per day" for "at the rate of $100 per man per day".

Cross-References

Banks — examination and supervision by Department, 32-1-211.

Building and loan associations — examinations by Department, 32-2-301.

Credits unions — examinations, 32-3-203.

Annual report, 32-5-308.

32-5-404. Access to records — witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

Cross-References

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Consumer Protection Act — department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

History: En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227.

Cross-References

Appointment of a receiver, Title 25, ch. 14, part 2.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

32-5-406. Penalties. (1) Any person who shall contract for or receive interest or charges on any bond, bill, promissory note, or other instrument of writing at a rate exceeding the maximum amount authorized by this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person who, by any device, subterfuge, or pretense whatsoever, shall engage in any transaction permitted only to licensees under the provisions of the chapter without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: **En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14, parts 1 and 2.

Penalty for usury — action to recover excessive interest, 31-1-108.

Charges, refunds, penalties, filing fees, 32-5-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-5-407. Attorney fees — bad check charge. (1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of $10 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

History: **En. Sec. 10, Ch. 424, L. 1981; amd. Sec. 4, Ch. 168, L. 1985.**

Compiler's Comments

1985 Amendment: Inserted (2).

Cross-References

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Part 5

Open-End Loans

32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges, as allowed under 31-1-112, on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301(5).

History: **En. Sec. 1, Ch. 218, L. 1981; amd. Sec. 7, Ch. 140, L. 1983; amd. Sec. 5, Ch. 168, L. 1985; amd. Sec. 6, Ch. 406, L. 1985.**

Compiler's Comments

1985 Amendments: Chapter 168 corrected internal subsection references.

Chapter 406 in (1) substituted "as allowed under 31-1-112" for "at a rate not in excess of the rate set forth in 32-5-301(10)"; and in (2) changed "32-5-301(7)" to "32-5-301(5)".

1983 Amendment: In (1), after "loans" deleted "up to the maximum amount permitted for other loans under this chapter".

32-5-502. Computation of charges. (1) Charges authorized by this part shall be computed in each billing cycle by any of the following methods:

(a) by converting the monthly rate to a daily rate and multiplying such daily rate by the daily unpaid principal balance of the account; or

(b) by multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) by multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle.

(2) For purposes of this part, "billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from such date.

(3) For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

History: En. Sec. 2, Ch. 218, L. 1981.

32-5-503. Early payment. The borrower may at any time pay all or any part of the unpaid balance in his account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. Minimum monthly payments shall be in such amount as would result in the full repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in 32-5-302(1).

History: En. Sec. 3, Ch. 218, L. 1981.

32-5-504. Additional charges. In addition to the charges permitted under 32-5-501, a holder of a supplementary license may contract for and receive the fees, costs, and expenses permitted by this chapter on other loans, subject to all the conditions and restrictions set forth in the applicable provisions of this chapter with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay, in the case of credit life insurance, the total balance of the loan due on the date of the borrower's death or, in the case of credit disability insurance, all minimum payments that become due on the loan during the covered period of disability. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the commissioner of insurance, to the unpaid balances in the borrower's account, using either of the methods specified in 32-5-502 for the calculation of loan charges.

(2) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

History: En. Sec. 4, Ch. 218, L. 1981.

Cross-References

Credit life and disability insurance, Title 33, ch. 21.

32-5-505. Security. A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain any such security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain any such security interest until the open-end account is terminated; however, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within 10 days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan.

History: En. Sec. 5, Ch. 218, L. 1981.

Cross-References

Secured transactions, Title 30, ch. 9.

32-5-506. Provisions not applicable. The provisions of subsections (3) and (4) of 32-5-301 and the provisions of 32-5-304 do not apply to open-end loans.

History: En. Sec. 6, Ch. 218, L. 1981; amd. Sec. 6, Ch. 168, L. 1985; amd. Sec. 7, Ch. 406, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 168 corrected internal subsection references. Chapter 406 substituted "(3) and (4)" for "(5) and (6)".

CHAPTER 6

ELECTRONIC FUNDS TRANSFER ACT

Part 1 — General Provisions

Section
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32-6-103. Definitions.
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32-6-201. Satellite terminals — permitted uses.
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32-6-304. Automatic teller machines — additional standards.

32-6-305. Point-of-sale terminals — additional standards.
32-6-306. Personal identification number — restrictions.
32-6-307. Advertising — restrictions.
32-6-308. Standard format code.
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Part 4 — Regulation and Enforcement

32-6-401. Rulemaking authority delegated.
32-6-402. Enforcement.

Part 1

General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Credit Transactions and Relationships, Title 31.

32-6-101. Short title. This chapter shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

History: En. 5-1701 by Sec. 1, Ch. 503, L. 1977; R.C.M. 1947, 5-1701.

32-6-102. Findings and purpose. (1) The legislature has determined that development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology. This chapter shall apply to financial institutions chartered under the United States Code, to the extent permitted by such code.

(2) The legislature finds need to control location and structural placement of electronic terminals in order to:

(a) assure access, protection, and convenience to the public using them;

(b) assure that structural placement of automated teller machines is designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;

(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;

(d) prevent vehicle backup onto public highways;

(e) prevent undue interference with nearby businesses;

(f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.

(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems,

including various types of terminals, telecommunications between them and computer and switching equipment or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.

(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.

(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for penalties for violation of this chapter.

History: En. 5-1702 by Sec. 2, Ch. 503, L. 1977; R.C.M. 1947, 5-1702.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Authorization for certain satellite terminals required, 32-6-202.

Geographical restrictions on certain satellite terminals, 32-6-204.

32-6-103. Definitions. As used in this chapter, the following definitions shall apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 shall be considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 32-1-372.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of commerce.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer with relation to a financial institution.

History: En. 5-1703 by Sec. 3, Ch. 503, L. 1977; R.C.M. 1947, 5-1703; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (8).

32-6-104. Consumer information. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

(b) the charges, if any, for individual transactions engaged in through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (1)(d) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

History: En. 5-1706 by Sec. 6, Ch. 503, L. 1977; R.C.M. 1947, 5-1706.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

Unauthorized transactions — liability, 32-6-303.

32-6-105. Protection of privacy. (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record.

(2) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

History: En. 5-1709 by Sec. 9, Ch. 503, L. 1977; R.C.M. 1947, 5-1709.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Point-of-sale terminals — additional standards, 32-6-305.

32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment:

(a) and permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both such imprisonment and fine.

History: En. 5-1710 by Sec. 10, Ch. 503, L. 1977; R.C.M. 1947, 5-1710.

Cross-References
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

Part 2

Satellite Terminals

32-6-201. Satellite terminals — permitted uses. Satellite terminals may be employed in the state only in the following capacities:

(1) as an automated teller machine to make electronic funds transfers as defined in this chapter, off the premises of a financial institution, operated by the customers of financial institutions without assistance;

(2) as a point-of-sale terminal, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services.

History: En. 5-1704 by Sec. 4, Ch. 503, L. 1977; R.C.M. 1947, 5-1704.

32-6-202. Authorization for certain satellite terminals required. (1) Subject to the limitation expressed in 32-6-204 and to the other requirements of this chapter, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within or not more than 3 miles beyond the incorporated municipality where each participating institution maintains its office or, if the financial institution is located outside an incorporated municipality, then not more than 3 miles from its principal place of business, after first obtaining authorization from the department pursuant to rules adopted by the department. Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department and they shall not be used for any purpose other than is authorized in this chapter.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this chapter.

History: En. 5-1705 by Sec. 5, Ch. 503, L. 1977; R.C.M. 1947, 5-1705.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Automatic teller machines — additional standards, 32-6-304.

Point-of-sale terminals — additional standards, 32-6-305.

Enforcement, 32-6-402.

32-6-203. Institutional access requirements. (1) A satellite terminal used by a financial institution must be made available, on a nondiscriminatory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 32-6-204, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 32-6-204. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code, and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this chapter and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution.

History: En. 5-1707 by Sec. 7, Ch. 503, L. 1977; R.C.M. 1947, 5-1707; amd. Sec. 1, Ch. 205, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), after "reasonable return on the owner's equity" deleted "The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana."

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Investments of financial institutions, 32-1-424.

Building and loan associations — investments, 32-2-406.

Credit unions — investment of funds, 32-3-701.

32-6-204. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

(2) Any financial institution or its customers may use any automated teller machine located in this state, regardless of its ownership, to perform electronic funds transfers under terms and conditions mutually agreeable to the owner of the automated teller machine and the other user and pursuant to 32-6-203(1).

(3) The department may authorize the operation of an automated teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(4) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may:

(a) debit his account in an out-of-state financial institution at an in-state satellite terminal:

(i) in order to withdraw cash; or

(ii) to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state; or

(b) make inquiry as to his account balance.

(5) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services.

History: En. 5-1708 by Sec. 8, Ch. 503, L. 1977; R.C.M. 1947, 5-1708; amd. Sec. 2, Ch. 205, L. 1983; amd. Sec. 1, Ch. 238, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4)(a)(i) and (4)(b).

1983 Amendment: Inserted (2).

Cross-References

Foreign corporations, 32-1-103.

Branch bank prohibited — exceptions, 32-1-372.

When advertising as bank prohibited, 32-1-402.

Point-of-sale terminals — additional standards, 32-6-305.

Regulation and enforcement, Title 32, ch. 6, part 4.

Part 3

Operation

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-6-301. Records of electronic funds transfers. (1) A satellite terminal shall be operated so as to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer shall be admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction which it records.

(3) (a) A financial institution shall provide each of its customers utilizing electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the

customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) of this section.

(b) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers shall be identified as such and be furnished in compliance with this subsection.

History: En. 5-1711 by Sec. 11, Ch. 503, L. 1977; R.C.M. 1947, 5-1711.

Cross-References

Reproduction of bank records — admissibility in evidence, 32-1-492.

Admissibility of copies in evidence — exception when original available, 32-1-493.

Protection of privacy, 32-6-105.

Unauthorized disclosure of electronic funds transfer records, 32-6-106.

32-6-302. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

History: En. 5-1712 by Sec. 12, Ch. 503, L. 1977; R.C.M. 1947, 5-1712.

32-6-303. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount shall be recredited to his account as provided under 32-6-302, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of such loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of such theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by such other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4) of this section.

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer which does not fall upon a customer or a merchant under this section falls upon the financial institution which carries out the transfer.

History: En. 5-1713 by Sec. 13, Ch. 503, L. 1977; R.C.M. 1947, 5-1713.

Cross-References

Destruction of bank records, 32-1-491.

Consumer information, 32-6-104.

32-6-304. Automatic teller machines — additional standards. Before the department authorizes an automatic teller machine, the owner must certify to the department that the machine complies with the provisions of this chapter and is:

(1) equipped with adequate security provisions;

(2) activated by a unique identification device;

(3) designed so as to produce the transaction record required by 32-6-301(1).

History: En. 5-1714 by Sec. 14, Ch. 503, L. 1977; R.C.M. 1947, 5-1714.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Protection of privacy, 32-6-105.

Authorization for certain satellite terminals required, 32-6-202.

32-6-305. Point-of-sale terminals — additional standards. (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer;

(c) he will institute a procedure whereby he keeps one copy of each such draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 32-6-301(1), and he forwards one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 32-6-105.

History: **En. 5-1715 by Sec. 15, Ch. 503, L. 1977; R.C.M. 1947, 5-1715.**

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Destruction of bank records, 32-1-491.

Authorization for certain satellite terminals required, 32-6-202.

32-6-306. Personal identification number — restrictions. (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

History: **En. 5-1716 by Sec. 16, Ch. 503, L. 1977; R.C.M. 1947, 5-1716.**

Cross-References

Personal identification number defined, 32-6-103.

Driver's license, 61-5-111.

32-6-307. Advertising — restrictions. Advertising on satellite terminals shall be restricted to a common symbol or to identification of each participating financial institution in characters of equal size and prominence. This section does not restrict the right of financial institutions to advertise electronic funds transfer services in other media.

History: **En. 5-1717 by Sec. 17, Ch. 503, L. 1977; R.C.M. 1947, 5-1717.**

Cross-References

When advertising as bank prohibited, 32-1-402.

32-6-308. Standard format code. All satellite terminals in the state shall be operated by a standard format code compatible with that used in other states. If cards are used as unique identification devices, the department may, by rule, prescribe a standard size.

History: **En. 5-1718 by Sec. 18, Ch. 503, L. 1977; R.C.M. 1947, 5-1718.**

32-6-309. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service.

History: **En. 5-1719 by Sec. 19, Ch. 503, L. 1977; R.C.M. 1947, 5-1719.**

Cross-References

Bank deposits and collections, Title 30, ch. 4.

Building and loan associations — checking accounts prohibited, 32-2-419.

Part 4

Regulation and Enforcement

32-6-401. Rulemaking authority delegated. The department may adopt, amend, or repeal rules reasonably necessary to implement this chapter and effectuate its purposes.

History: En. 5-1720 by Sec. 20, Ch. 503, L. 1977; R.C.M. 1947, 5-1720.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-6-402. Enforcement. (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this chapter or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

History: En. 5-1721 by Sec. 21, Ch. 503, L. 1977; R.C.M. 1947, 5-1721.

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Injunctions, Title 27, ch. 19.

Authorization for certain satellite terminals required, 32-6-202.

TITLE 33

INSURANCE AND INSURANCE COMPANIES

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CHAPTER 1

ADMINISTRATION AND GENERAL PROVISIONS

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Part 1
General Provisions

33-1-101. Short title. This title constitutes the "Montana Insurance Code".

History: **En. Sec. 1, Ch. 286, L. 1959; R.C.M. 1947, 40-2601; amd. Sec. 1, Ch. 77, L. 1979.**

33-1-102. Compliance required — exceptions — health service corporations. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code shall not apply to health service corporations to the extent that the existence and operations of such corporations are authorized by Title 35, chapter 2, and related sections of the Montana Code Annotated.

History: **En. Sec. 9, Ch. 286, L. 1959; Sec. 40-2609, R.C.M. 1947; (2)En. Sec. 10, Ch. 286, L. 1959; Sec. 40-2610, R.C.M. 1947; (3)En. Sec. 11, Ch. 286, L. 1959; Sec. 40-2611, R.C.M. 1947; R.C.M. 1947, 40-2609, 40-2610, 40-2611.**

33-1-103. Particular provisions prevail. Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

History: **En. Sec. 16, Ch. 286, L. 1959; R.C.M. 1947, 40-2616.**

Cross-References

Particular laws qualify general, 1-3-225.

33-1-104. General penalty. Each violation of any provision of this code, except 33-30-1012, with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 17, Ch. 286, L. 1959; R.C.M. 1947, 40-2617.

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of the Insurance Code (Title 33, see 33-1-101) and to make the Insurance Code apply to it. The Code Commissioner has codified the section in Title 33 as 33-30-1012 for logic and convenience, but references to "this code" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in Title 33, the Code Commissioner has inserted "except 33-30-1012" after "this code" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

Cross-References

Administrative penalties authorized, 33-1-317.

Part 2

Definitions and Insurance Coverages

33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used as to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

History: En. Secs. 2, 3, 6, 7, 8, Ch. 286, L. 1959; R.C.M. 1947, 40-2602, 40-2603, 40-2606, 40-2607, 40-2608; amd. Sec. 1, Ch. 198, L. 1979; amd. Sec. 4, Ch. 664, L. 1979; amd. Sec. 1, Ch. 202, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (7).

Cross-References

Certificate of authority, Title 33, ch. 2, part 1.

Business corporation law not applicable for insurance purposes, 35-1-107.

33-1-202. Definitions — entities. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) "Commissioner" means the commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity.

(4) "Resident of this state" means a person who has maintained a principal residence within the state of Montana for a period of not less than 2 consecutive years.

History: En. Secs. 4, 5, Ch. 286, L. 1959; R.C.M. 1947, 40-2604, 40-2605; amd. Sec. 2, Ch. 198, L. 1979; amd. Sec. 2, Ch. 202, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4).

Cross-References

Insurance Department, 2-15-1902.

Commissioner of Insurance — Auditor as ex officio, 2-15-1903.

33-1-203 and 33-1-204 reserved.

33-1-205. Definitions of kinds of insurance not mutually exclusive. It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in this part, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage may likewise be reasonably included.

History: En. Sec. 72, Ch. 286, L. 1959; R.C.M. 1947, 40-2901.

Cross-References

Combinations of insuring powers — authority, 33-2-108.

Scope of certificate of authority — delimiting combinations of kinds of insurance, 33-2-116.

33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) liability insurance which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) burglary and theft which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock which is insurance against loss or damage to livestock and for services of a veterinary for such animals;

(m) entertainments which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) miscellaneous which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subsections (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be considered to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or disability insurances.

History: En. Sec. 76, Ch. 286, L. 1959; amd. Sec. 49, Ch. 359, L. 1977; R.C.M. 1947, 40-2905.

Cross-References

Medical malpractice — panel to review claims, Title 27, ch. 6.

Product liability insurer — report, 33-2-721.

Casualty insurance — general provisions, Title 33, ch. 23, part 1.

Workers' compensation — plans for providing, Title 39, ch. 71, parts 21 through 23.

Robbery, 45-5-401.

Crimes against property, Title 45, ch. 6.

Elevators — inspection and maintenance, Title 50, ch. 60, part 7.

Boilers and boiler inspectors, Title 50, ch. 74, part 2.

33-1-207. Disability insurance. Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against disablement or expense resulting from sickness and every insurance appertaining thereto. Transaction of disability insurance does not include workers' compensation insurance.

History: En. Sec. 74, Ch. 286, L. 1959; R.C.M. 1947, 40-2903.

Cross-References

Disability insurance — general provisions, Title 33, ch. 22, part 1.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-208. Life insurance. Life insurance is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance.

History: En. Sec. 73, Ch. 286, L. 1959; R.C.M. 1947, 40-2902.

Cross-References

Life insurance — general provisions, Title 33, ch. 20.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-209. Marine protection and indemnity and wet marine insurance. (1) Marine insurance includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

(2) For the purposes of this code wet marine and transportation insurance is that part of marine insurance which includes only:

(a) insurance upon vessels, crafts, and hulls and of interests therein or with relation thereto;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(c) insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

(d) insurance of personal property and interests therein, in course of exportation from or importation into any country and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation while being prepared for and while awaiting shipment and during any delays, storage, transshipment, or reshipment incident thereto.

History: **En. Sec. 78, Ch. 286, L. 1959; R.C.M. 1947, 40-2907; amd. Sec. 11, Ch. 467, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted subsection (1)(a) relating to marine insurance coverage in detail (for language deleted, see Sec. 78, Ch. 286, L. 1959).

33-1-210. Property insurance. Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

History: **En. Sec. 75, Ch. 286, L. 1959; R.C.M. 1947, 40-2904.**

Cross-References

Property insurance — general provisions, Title 33, ch. 24.

33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to the insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, or criminal mischief or any attempt thereat.

History: En. Sec. 77, Ch. 286, L. 1959; amd. Sec. 50, Ch. 359, L. 1977; R.C.M. 1947, 40-2906; amd. Sec. 3, Ch. 198, L. 1979.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

33-1-212. Title insurance. Title insurance is insurance of owners of property or others having an interest therein or liens or encumbrances thereon against loss by encumbrance, defective titles, invalidity, or adverse claim to title.

History: En. Sec. 79, Ch. 286, L. 1959; R.C.M. 1947, 40-2908.

Cross-References

Title insurance — general provisions, Title 33, ch. 25.

33-1-213 through 33-1-220 reserved.

33-1-221. Nationwide inland marine definition law. Sections 33-1-221 through 33-1-229 may be cited as the "Nationwide Inland Marine Definition Act".

History: En. Sec. 1, Ch. 467, L. 1981.

33-1-222. Purpose. (1) The purpose of 33-1-221 through 33-1-229 is to describe the kinds of risks and coverages which may be classified or identified under state insurance laws as marine, inland marine, or transportation insurance, but 33-1-221 through 33-1-229 do not include all of the kinds of risks and coverages which may be written, classified, or identified under marine, inland marine, or transportation insuring powers. Sections 33-1-221 through 33-1-229 may not be construed to mean that the kinds of risks and coverages described herein are solely marine, inland marine, or transportation insurance in all instances.

(2) Sections 33-1-221 through 33-1-229 may not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and licenses whether used separately, in combination, or otherwise.

History: En. Sec. 2, Ch. 467, L. 1981.

33-1-223. Imports. Imports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Imports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an import and the proper subject of marine, inland marine, or transportation insurance as long as the property remains segregated in such a way that it can be identified and has not become incorporated into and mixed with the general mass of property in the United States; property ceases to be an import and the proper subject of marine, inland marine, or transportation insurance when it has been:

(a) sold and delivered by the importer, factor, or consignee;

(b) removed from its place of storage and placed on sale as part of an importer's stock in trade at a point of sale or distribution; or

(c) delivered for manufacture, processing, or change in form to premises of the importer or another, to be used for such purposes.

History: **En. Sec. 3, Ch. 467, L. 1981.**

33-1-224. Exports. Exports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Exports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an export and the proper subject of marine, inland marine, or transportation insurance when designated or while being prepared for export and remains an export unless diverted for domestic trade. If the property is diverted for domestic trade, the provisions of 33-1-225 apply. This section does not apply to long-established methods of insuring certain commodities such as cotton.

History: **En. Sec. 4, Ch. 467, L. 1981.**

33-1-225. Domestic shipments. Domestic shipments may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Domestic shipments on consignment for sale, distribution, exhibit, trial, approval, or auction may be covered while in transit, while in the custody of others, and while being returned, except that the policy may not cover property while it is on premises owned, leased, or operated by the consignor.

(2) Domestic shipments not on consignment may be covered if the coverage of the issuing companies includes hazards of transportation beginning and ending within the United States. Such shipments are not covered at the manufacturing premises or after arrival at premises owned, leased, or operated by the assured or the purchaser.

History: **En. Sec. 5, Ch. 467, L. 1981.**

33-1-226. Instrumentalities of transportation and commerce. Bridges, tunnels, and other instrumentalities of transportation and communication (excluding buildings and improvements, furniture, furnishings, fixed contents, and supplies held in storage) may be covered by marine, inland marine, and transportation policies. This category includes:

(1) bridges, tunnels, and other similar instrumentalities, including auxiliary facilities and equipment attendant thereto;

(2) piers, wharves, docks, slips, drydocks, and marine railways;

(3) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(4) power transmission, telephone, and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(5) radio and television communication equipment in use as such, including towers and antennas with auxiliary equipment, and appurtenant electrical operating and control apparatus; and

(6) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

History: **En. Sec. 6, Ch. 467, L. 1981.**

33-1-227. Personal property. Risks generally covered by personal property floaters covering individuals or items of personal property may be covered by marine, inland marine, and transportation policies. This category includes:

(1) personal effects floater policies;

(2) personal property floaters;

(3) government service floaters;

(4) personal fur floaters;

(5) personal jewelry floaters;

(6) wedding present floaters for a period not exceeding 90 days after the date of the wedding;

(7) silverware floaters;

(8) fine arts floaters covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit;

(9) stamp and coin floaters;

(10) musical instrument floaters. For purposes of this section, radios, televisions, record players, and combinations thereof are not musical instruments.

(11) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use) covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(12) installment sales and leased property policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract, or installment sales contract or leased but excluding motor vehicles designed for highway use. Such policies must cover property in transit but shall not extend beyond the termination of the seller's or lessor's interest; and

(13) live animal floaters.

History: **En. Sec. 7, Ch. 467, L. 1981.**

33-1-228. Commercial property. Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. Such policies may include coverage of such furniture, fixtures, and tenant assured's interest in such improvements of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel about with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) salesmen's samples floaters;

(7) exhibition policies on property while it is on exhibition and in transit to or from such exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for an awaiting specific installation, building, renovating, or repairing. Such coverage is limited to builders' risks or installation risks where perils in addition to fire and extended coverage are to be insured. If written for the account of the owner, the coverage ceases upon completion of work and acceptance thereof; or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use) covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use such property for which it was manufactured or created. Such policies may not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(11) property in transit to or from and in the custody of bailees (not owned, controlled, or operated by the bailor), but such policies may not cover the bailee's property at his premises;

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the seller's or lessor's interest. This subsection does not include machinery and equipment under certain "lease-back" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer, if:

(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as such;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection;

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored therein;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

(23) electronic data processing policies.

History: En. Sec. 8, Ch. 467, L. 1981.

33-1-229. Exceptions. Unless otherwise permitted, nothing in 33-1-223 through 33-1-229 may be construed to permit marine, inland marine, or transportation insurance policies to cover:

(1) storage of an assured's merchandise, except as specifically provided;

(2) merchandise in the course of manufacture which is the property of and on the premises of the manufacturer;

(3) furniture, fixtures, and improvements to buildings; or

(4) money or securities in safes, vaults, safety deposit vaults, or banks or on the assured's premises, except while in the course of transportation.

History: En. Sec. 9, Ch. 467, L. 1981.

Part 3

Commissioner and Department General Powers and Duties

33-1-301. Insurance department — control — appropriations. (1) The insurance department shall be under the control and supervision of the commissioner.

(2) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: **En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702(2), (3).**

Cross-References

Insurance Department — creation, 2-15-1902.

State Auditor — ex officio Insurance Commissioner, 2-15-1903.

33-1-302. Commissioner's seal. (1) The commissioner shall have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner shall bear his seal, except that the commissioner may, in his discretion, omit the seal as to licenses.

History: **En. Sec. 22, Ch. 286, L. 1959; R.C.M. 1947, 40-2703.**

Cross-References

The Great Seal of the State of Montana — description, 1-1-501.

33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who shall be in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for the purposes that he designates.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to him.

(4) The commissioner may appoint or employ examiners to conduct or assist in examinations of insurers and others provided for under the code. Examiners must be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner may appoint and employ a field investigator whose primary duty it is, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

(6) The commissioner may appoint a chief clerk for the insurance department and employ such other assistants and clerks as may be necessary to assist him properly to discharge the duties imposed upon him under this code.

(7) The commissioner may at any time terminate the appointment, designation, or employment of any such deputy, actuary, chief clerk, or other employee.

(8) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, such actuarial, technical, or other professional services as he may require for the discharge of his duties.

(9) The compensation of the commissioner's personal staff, as defined in Title 2, chapter 18, part 1, shall be as fixed by the commissioner but in the aggregate may not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose.

History: En. Sec. 23, Ch. 286, L. 1959; R.C.M. 1947, 40-2704; amd. Sec. 1, Ch. 4, L. 1979; amd. Sec. 4, Ch. 198, L. 1979.

Cross-References

Deputies of public officers, Title 2, ch. 16, part 3.

State employee classification, compensation, and benefits, Title 2, ch. 18.

Personal staff, 2-18-104.

33-1-304. Delegation of authority — responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of his department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner shall be responsible for the official acts of his deputy, assistant, examiner, or employee acting in the commissioner's name and by his authority.

History: En. Sec. 25, Ch. 286, L. 1959; R.C.M. 1947, 40-2706.

Cross-References

Powers of deputies, 2-16-303.

33-1-305. Conflicts of interest and certain compensation prohibited. (1) The commissioner or any deputy, examiner, assistant, or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy.

(2) The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Interest in certain contracts — prohibition, 2-2-201.

Official misconduct — crime, 45-7-401.

33-1-306. Dual contracts permitted. As to such matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, attorneys, or other technicians who are independently practicing their professions even though similarly employed or retained by insurers or others.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

33-1-307 through 33-1-310 reserved.

33-1-311. General powers and duties. (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(1) thru (3), (5).

Cross-References

Deductible insurance plan for state buildings — cooperation, 2-17-104.

Fire departments — report, 19-11-511.

Development credit corporations — report, 32-4-306.

33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of his official transactions, examinations, investigations, and proceedings and keep such records in his office. Such records and insurance filings in his office shall be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish his certificate as to the authority of any person to transact insurance, and such certificate shall be evidence of the facts set forth therein.

(3) Copies of records or documents in his office certified to by the commissioner shall be received in evidence in all courts as if they were the originals.

History: (1)En. Sec. 26, Ch. 286, L. 1959; Sec. 40-2707, R.C.M. 1947; (2), (3)En. Sec. 27, Ch. 286, L. 1959; Sec. 40-2708, R.C.M. 1947; R.C.M. 1947, 40-2707, 40-2708.

Cross-References

Records of officers — public inspection allowed, 2-6-104.

Evidence consisting of public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Examination reports — confidentiality, 33-1-412.

33-1-313. Rules — notice, hearing, and penalty. (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code, except 33-30-1012. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.

History: En. Sec. 29, Ch. 286, L. 1959; R.C.M. 1947, 40-2710.

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of the Insurance Code (Title 33, see 33-1-101) and to make the Insurance Code apply to it. The Code

Commissioner has codified the section in Title 33 as 33-30-1012 for logic and convenience, but references to "this code" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in Title 33, the Code Commissioner has inserted "except 33-30-1012" after "this code" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

Cross-References

Applicability of MAPA to agencies, 2-3-102, 2-4-102.

Montana Administrative Procedure Act (MAPA), Title 2, ch. 4.

Rules for organization or procedure of agency, 2-4-201.

Notice and hearing for rule adoption, 2-4-302.

Requisites for validity of rule, 2-4-305.

Publication of rule required, 2-4-306.

Administrative penalties, 33-1-317.

Ten days' notice required, 33-1-703.

33-1-314. Orders and notices. (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

(2) Every such order shall state its effective date and shall concisely state:

(a) its intent or purpose;

(b) the grounds on which based;

(c) the provisions of this code pursuant to which action is so taken or proposed to be taken, but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.

History: **En. Sec. 30, Ch. 286, L. 1959; R.C.M. 1947, 40-2711.**

33-1-315. Witnesses — production of records — subpoena — failure to respond — perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully

served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.

(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.

History: En. Sec. 37, Ch. 286, L. 1959; R.C.M. 1947, 40-2718; amd. Sec. 5, Ch. 198, L. 1979.

Cross-References

Travel allowance — mileage, 2-18-503, 2-18-504.

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Subpoena of witnesses, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Disobedience of subpoena, 26-2-104.

Witness fees, Title 26, ch. 2, part 5.

Perjury — crime, 45-7-201.

Misdemeanor, 46-18-212.

33-1-316. Testimony compelled — immunity from prosecution. No person shall be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter, or thing concerning which he is so compelled to produce evidence or to testify under oath, except for perjury committed in such testimony.

History: En. Sec. 38. Ch. 286, L. 1959; R.C.M. 1947, 40-2719.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of $5,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed $500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(4).

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of the Insurance Code (Title 33, see 33-1-101) and to make the Insurance Code apply to it. The Code

Commissioner has codified the section in Title 33 as 33-30-1012 for logic and convenience, but references to "this code" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in Title 33, the Code Commissioner has inserted "except 33-30-1012" after "this code" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

Cross-References

Appeal — Lewis and Clark County District Court, 33-1-711.

Offenses without criminal intent — limitation, 45-2-104.

Part 4

Examinations by Department

33-1-401. Examination of insurers. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less frequently than every 3 years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact insofar as the transactions of the attorney-in-fact relate to the insurer.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

History: En. Sec. 32, Ch. 286, L. 1959; R.C.M. 1947, 40-2713.

Cross-References

Certificates of authority, Title 33, ch. 2, part 1.

33-1-402. Examination of agents, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any insurance agent, solicitor, surplus line agent, general agent, or adjuster;

(2) any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise;

(4) any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business.

History: En. Sec. 33, Ch. 286, L. 1959; R.C.M. 1947, 40-2714.

33-1-403. Conduct of examination — records — correction of accounts — appraisals. (1) The commissioner shall conduct any such examination at the home office, if a domestic or foreign insurer, or United States branch office, if an alien insurer, of the insurer or in any of its branch or agency offices. With respect to persons other than insurers, the commissioner shall conduct any such examination at the office or other place of business of such person or at any place or places where his records are kept.

(2) Every person being examined, its officers, employees, agents, and representatives shall produce and make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in his possession or control relating to the subject of the examination and shall otherwise facilitate and aid such examination as far as reasonably possible.

(3) If the commissioner finds accounts to be inadequate or inadequately kept or posted, he may employ experts to rewrite, post, or balance them at the expense of the person being examined if such person has failed to complete or correct such accounting after the commissioner has given him notice and a reasonable opportunity to do so.

(4) If the commissioner deems it necessary to value any real estate involved in any such examination, he may make written request of the person being examined to appoint one or more competent appraisers approved by the commissioner for the purpose of appraising such property. If no such appointment is made within 10 days after such request was delivered to such person, the commissioner may appoint the appraiser or appraisers. Any such appraisal shall be made promptly and a copy of the report thereof shall be furnished to the commissioner. The reasonable expense of the appraisal shall be borne by the person being examined.

History: En. Sec. 34, Ch. 286, L. 1959; R.C.M. 1947, 40-2715.

33-1-404 through 33-1-410 reserved.

33-1-411. Destruction of records — hindrance of examination — penalty. Any director, officer, agent, or employee of any company who for the purpose of hindering any examination conducted pursuant to this part destroys any books, records, or documents required to be kept by law shall be punished by a fine of not more than $1,000. After notice and hearing in accordance with Title 33, chapter 1, part 7, the commissioner may revoke the certificate of authority of such company.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(3); amd. Sec. 6, Ch. 198, L. 1979.

33-1-412. Examination reports — hearings — confidentiality — publication. (1) The commissioner or his examiner shall make a full and true report of each examination, verified by his oath.

(2) The report shall comprise only facts appearing from the books, papers, records, or documents of the person being examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by such facts.

(3) The commissioner shall furnish a copy of the proposed report to the person examined not less than 20 days prior to filing the same in his office. If such person so requests in writing within such 20-day period, the commissioner shall grant a hearing with respect to the report and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(4) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(5) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(6) If he deems such to be in the public interest, the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(1), (2), (4) thru (7).

Cross-References

Records available to public, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-1-413. Examination expense — lien. (1) Upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization, each person so examined, other than as to examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the commissioner. Such an account may be so presented periodically during the course of the examination or at the termination of the examination as the commissioner deems proper. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3) If any such person fails to pay the charges and expenses, as referred to in subsection (1) above, they shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963; R.C.M. 1947, 40-2717.

Cross-References

Attorney General — duties, 2-15-501.

Examination of agents, managers, and promoters, 33-1-402.

Liens — definition, 71-3-101.

Ordering of liens, 71-3-115.

Part 5

Approval of Forms

Part Cross-References

Motor club service companies — approval of service contract forms, 61-12-308.

33-1-501. Filing and approval of forms. (1) No insurance policy or annuity contract form, application form, printed rider or endorsement form, or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner of this state and the state of domicile of the insurer, where so required. This provision shall not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by a rating organization on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than 60 days in advance of any such delivery. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional 60 days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may by order exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

(6) This section and 33-1-502 shall not apply as to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in this state or delivered in this state, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, group certificates which are delivered or issued for delivery in this state shall be filed with the commissioner upon his request.

History: En. Secs. 258, 271, Ch. 286, L. 1959; R.C.M. 1947, 40-3701(part), 40-3714; amd. Sec. 1, Ch. 303, L. 1981; amd. Sec. 1, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: In (1), in second sentence after "surety bonds" deleted "specially rated inland marine risks"; and inserted (7).

1981 Amendment: Deleted "basic" before "insurance policy" at the beginning of (1); deleted "where written application is required and is to be made a part of the policy or contract" after "application form" near the beginning of (1); added "of this state and the state of domicile of the insurer, where so required" at the end of the first sentence of (1); substituted "60 days" for "30 days" in two places in (2); substituted "60-day" for "30-day" in (2); deleted the second and fifth sentences of (2) relating to automatic approval if no action is taken within 30 days.

Cross-References

Rating organization — definition, 33-16-102.

33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;

(3) has any title, heading, or other indication of its provisions which is misleading;

(4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible.

History: En. Sec. 272, Ch. 286, L. 1959; R.C.M. 1947, 40-3715.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Language simplification requirements, 33-15-321 through 33-15-329.

Part 6

Service of Process

33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner and his successors in office as its attorney to receive service of legal process issued against it in Montana. The appointment shall be made on a form as designated and furnished by the commissioner. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Montana any contract made by the insurer or obligations arising therefrom.

(2) Each insurer at time of application for a certificate of authority shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(1), (3).

33-1-602. Service of process — foreign, alien, or domestic. Service of such process against a foreign or alien insurer shall be made only by service of process upon the commissioner or upon a deputy or other person in charge of his office during his absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(2).

Cross-References

Service upon a corporation, Rule 4D(2)(e), M.R.Civ.P. (see Title 25, ch. 20); 35-1-307.

Attorney-in-fact — reciprocal insurer, 33-5-104, 33-5-201.

33-1-603. Serving process — time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney, pursuant to 33-1-601, shall be served upon the commissioner or upon his deputy or other person in charge of his office during his absence. At the time of service, the plaintiff shall pay to the commissioner $10, taxable as costs in the action. Upon receiving such service, the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) Where process is served upon the commissioner as an insurer's attorney, the insurer shall have 30 days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer.

History: **En. Sec. 64, Ch. 286, L. 1959; amd. Sec. 1, Ch. 321, L. 1977; R.C.M. 1947, 40-2819.**

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-604 through 33-1-610 reserved.

33-1-611. Unauthorized Insurers Process Act — interpretation. (1) Sections 33-1-611 through 33-1-616 constitute and may be cited as the "Unauthorized Insurers Process Act".

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 178, Ch. 286, L. 1959; R.C.M. 1947, 40-3403.**

33-1-612. Commissioner — process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer arising out of any such contract or transaction, and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

History: **En. Sec. 179, Ch. 286, L. 1959; R.C.M. 1947, 40-3404.**

33-1-613. Service of process — criteria mandating designation of commissioner. (1) Service of process upon any such insurer pursuant to 33-1-612 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by plaintiff's attorney to the defendant at its last known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(2) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if:

(a) served upon any person within this state who in this state on behalf of such insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of such process is sent within 10 days thereafter by registered or certified mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

History: En. 40-3405 by Sec. 180, Ch. 286, L. 1975; R.C.M. 1947, 40-3405.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

Fee for Commissioner's service of process, 33-1-603.

33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus line insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action.

History: En. Sec. 181, Ch. 286, L. 1959; R.C.M. 1947, 40-3406.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-615. Defense of action by unauthorized insurer. (1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under 33-1-612 and 33-1-613, such insurer shall:

(a) procure a certificate of authority to transact insurance in this state; or

(b) deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

(2) The court in any action or proceeding in which service is made in the manner provided in 33-1-613 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) above and to defend such action.

(3) Nothing in subsection (1) above is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in 33-1-613 hereof, on the ground either:

(a) that such unauthorized insurer has not done any of the acts enumerated in 33-1-612; or

(b) that the person on whom service was made pursuant to 33-1-613(2) was not doing any of the acts therein enumerated.

History: En. Sec. 182, Ch. 286, L. 1959; R.C.M. 1947, 40-3407.

Cross-References

Motion to quash or set aside service, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

33-1-616. Attorney's fee. In any action against an unauthorized insurer under this Unauthorized Insurers Process Act, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the insurance contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. The fee shall not exceed one-third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

History: En. Sec. 183, Ch. 286, L. 1959; R.C.M. 1947, 40-3408.

Cross-References

Attorney fees, 25-10-301.

Part 7

Hearings and Appeals

Part Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

33-1-701. Hearings — discretion — written demand. (1) The commissioner may hold hearings for any purpose within the scope of this code deemed by him to be necessary.

(2) The commissioner shall hold a hearing if required by any provision or upon written demand therefor by a person aggrieved by any act, threatened act, or failure of the commissioner to act or by any report, rule, or order of the commissioner, other than an order for the holding of a hearing or an order on hearing or pursuant thereto. Any such demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and unless postponed by mutual consent, such hearing shall be held within 30 days after receipt by the commissioner of demand therefor.

(3) If within such 30-day period the commissioner does not either grant the hearing or issue his order refusing the hearing as to such previous report, rule, or order as to which such person so claims to be aggrieved, then the hearing shall thereby be deemed to have been refused.

History: En. Sec. 39, Ch. 286, L. 1959; R.C.M. 1947, 40-2720.

Cross-References

Contested administrative proceeding — notice requirements, 2-4-601.

33-1-702. Stay of action. (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within 10 days after such order is delivered shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed under:

(a) an order on hearing;

(b) an order pursuant and supplemental to an order on hearing; or

(c) an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court for Lewis and Clark County for a stay of the commissioner's proposed action.

History: En. Sec. 40, Ch. 286, L. 1959; R.C.M. 1947, 40-2721.

33-1-703. Notice of hearing. Not less than 10 days in advance, the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

History: En. Sec. 41, Ch. 286, L. 1959; R.C.M. 1947, 40-2722.

Cross-References

Notice requirements — contested administrative hearings, 2-4-601.

33-1-704. Hearing procedure. (1) All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests will be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Formal rules of pleading or evidence need not be observed at any hearing.

(5) Upon written request seasonably made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(1) thru (5); amd. Sec. 7, Ch. 198, L. 1979.

Cross-References

Hearing procedure — Montana Administrative Procedure Act, 2-4-612.

Record of hearing — contents, 2-4-614.

33-1-705. Rehearing. Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the same, the commissioner may, in his discretion, grant a rehearing or reargument of the matters involved in such hearing. Notice of such rehearing or reargument shall be given as provided in 33-1-703.

History: **En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(6).**

33-1-706. Order on hearing. (1) In conducting any such hearing, the commissioner shall sit in a quasi-judicial capacity. Within 30 days after termination of the hearing or of any rehearing thereof or reargument thereon, he shall make his order on hearing covering matters involved in such hearing and in any rehearing or reargument thereof and shall give a copy of such order to the same persons given notice of the hearing.

(2) The order shall contain a concise statement of the facts as found by the commissioner, of his conclusions therefrom, and of the matters required by 33-1-314.

(3) The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

History: **En. Sec. 43, Ch. 286, L. 1959; R.C.M. 1947, 40-2724.**

Cross-References

"Quasi-judicial function" defined, 2-15-102.

33-1-707 through 33-1-710 reserved.

33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus line agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the license of an agent, solicitor, or surplus line agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16.

History: En. Sec. 44, Ch. 286, L. 1959; R.C.M. 1947, 40-2725.

Cross-References

Costs in civil actions, Title 25, ch. 10.

Appeal to Supreme Court, Rule 42(c), M.R.App.Civ.P. (see Title 25, ch. 21).

Parts 8 through 10 reserved

Part 11

Jurisdiction of Providers of Health Care Benefits

Part Cross-References

Health service corporations, Title 33, ch. 30.

33-1-1101. Short title. This part may be cited as the "Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Act".

History: En. Sec. 1, Ch. 497, L. 1983.

33-1-1102. Authority and jurisdiction of insurance department. Notwithstanding any other provision of law and except as provided in this part, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government.

History: **En. Sec. 2, Ch. 497, L. 1983.**

33-1-1103 through 33-1-1110 reserved.

33-1-1111. How to show jurisdiction. A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services.

History: **En. Sec. 3, Ch. 497, L. 1983.**

33-1-1112. Subject to state laws. A person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government is subject to all appropriate provisions of this code regarding the conduct of its business.

History: **En. Sec. 5, Ch. 497, L. 1983.**

33-1-1113. Examination. A person or entity which is unable to show under 33-1-1111 that it is subject to the jurisdiction of another agency of this or another state or a subdivision thereof or the federal government must submit to an examination by the commissioner to determine the organization and solvency of the person or entity and to determine whether or not such person or entity complies with the applicable provisions of this code.

History: **En. Sec. 4, Ch. 497, L. 1983.**

33-1-1114. Disclosure. (1) A production agency or administrator that advertises, sells, transacts, or administers the coverage in this state described in 33-1-1102 and that is required to submit to an examination by the insurance commissioner under 33-1-1113 shall, if such coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or nonprofit health service corporation, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(2) An administrator that advertises or administers the coverage in this state described in 33-1-1102 and is required to submit to an examination by the commissioner under 33-1-1113 shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect.

History: **En. Sec. 6, Ch. 497, L. 1983.**

CHAPTER 2

REGULATION OF INSURANCE COMPANIES

Part 1 — Authorization of Insurers

Section

33-2-101. Certificate of authority required.
33-2-102. Exceptions to certificate of authority requirement.

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33-2-110. Special surplus required.
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Part 1

Authorization of Insurers

33-2-101. Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall have or maintain in Montana any office, representative, or other facilities for the solicitation or servicing of any kind of insurance in any other state unless it is then authorized to transact the same kind of insurance in this state.

History: En. Sec. 46, Ch. 286, L. 1959; R.C.M. 1947, 40-2801.

Cross-References

Examination prior to initial issuance of certificate, 33-1-401.

Lack of or revocation of certificate — grounds for conservation or liquidation of assets — alien or foreign insurer, 33-2-1379.

Membership in Montana Insurance Guaranty Association — condition of authority to operate in state, 33-10-103, 33-10-203.

Motor club service companies — licensing, 61-12-302.

33-2-102. Exceptions to certificate of authority requirement. A certificate of authority shall not be required of an insurer, not otherwise authorized in this state, as to the following transactions:

(1) transactions relative to its policies lawfully written in Montana or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in Montana;

(2) transactions relative thereto subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in Montana at time of issuance, and which coverage was lawfully solicited, written, and delivered outside Montana;

(3) transactions pursuant to surplus lines coverages lawfully written pursuant to part 3 of this chapter;

(4) reinsurance, except as to domestic reinsurers.

History: En. Sec. 47, Ch. 286, L. 1959; R.C.M. 1947, 40-2802.

33-2-103. Admission for investment only. A foreign insurer may transact business in this state without certificate of authority for the purpose and to the extent only of investing its funds in Montana real estate or in securities secured thereby by complying with the applicable laws of this state other than this code. Such an insurer shall not be subject to any other provision of this code.

History: En. Sec. 48, Ch. 286, L. 1959; R.C.M. 1947, 40-2803.

33-2-104. Representing or aiding unauthorized insurer prohibited. (1) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

(2) This section shall not apply to:

(a) acceptance of service of process by the commissioner under 33-1-613;

(b) surplus lines insurance and other transactions as to which certificate of authority is not required of an insurer as stated in 33-2-102.

(3) Any person violating this section shall upon conviction thereof be guilty of a felony.

History: En. Sec. 176, Ch. 286, L. 1959; R.C.M. 1947, 40-3401.

Cross-References

Tax and report — due of insured of unauthorized insurer, 33-2-706.

Felony, 46-18-213.

33-2-105. Suits by unauthorized insurers prohibited. Except as to transactions permitted under 33-2-102, no unauthorized insurer shall institute or file or cause to be instituted or filed any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until such insurer has obtained a certificate of authority to transact such insurance in this state.

History: En. Sec. 177, Ch. 286, L. 1959; R.C.M. 1947, 40-3402; amd. Sec. 8, Ch. 198, L. 1979.

Cross-References

Tax and report — due of insured of unauthorized insurer, 33-2-706.

33-2-106. General eligibility of insurers. (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may hereafter be formed as a domestic insurer under this code.

(2) No foreign insurer shall be authorized to transact insurance in Montana which does not maintain reserves as required by part 5 of this chapter applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States, or which transacts business anywhere in the United States on the assessment plan, stipulated premium plan, or any similar plan.

(3) No foreign insurer which is directly or indirectly owned or controlled in whole or in substantial part by any government or governmental agency shall be authorized to transact insurance in Montana unless it was so owned and first so authorized prior to January 1, 1957. Membership or subscribership in a mutual or reciprocal insurer by virtue of being a policyholder thereof, ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

History: En. Sec. 49, Ch. 286, L. 1959; R.C.M. 1947, 40-2804.

Cross-References

Examination prior to issuance of initial certificate, 33-1-401.

33-2-107. Name — dissimilar. (1) No insurer shall be authorized to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

(2) No life insurer shall be authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this state.

(3) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(4) In case of conflict of names between two insurers or a conflict otherwise prohibited under the foregoing subsections of this section, the commissioner may permit or require the more recently authorized insurer to use in Montana such supplementation or modification of its name or such business name as may reasonably be necessary to avoid such conflict.

History: En. Sec. 50, Ch. 286, L. 1959; R.C.M. 1947, 40-2805.

33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and 33-25-213, an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer.

History: En. Sec. 51, Ch. 286, L. 1959; R.C.M. 1947, 40-2806; amd. Sec. 16, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of (1) after "(4)", inserted "and 33-25-213".

Cross-References

Reciprocal insurers, Title 33, ch. 5.

33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as required under 33-2-110:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	50,000
Property	400,000
Marine	400,000
Casualty	
All lines except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty, or surety)	800,000

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 3, and domestic reciprocal insurers shall be governed by chapter 5.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

(5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum capital or surplus required for credit life and disability pursuant to subsection (1).

History: En. Sec. 52, Ch. 286, L. 1959; amd. Sec. 1, Ch. 319, L. 1977; R.C.M. 1947, 40-2807(part); amd. Sec. 2, Ch. 303, L. 1981; amd. Sec. 3, Ch. 202, L. 1983.

Compiler's Comments

1983 Amendment: In table in (1), inserted provision relating to "credit life and disability"; and inserted (5).

1981 Amendment: Deleted "foreign" before "mutual or foreign reciprocal insurer" in the middle of (1).

33-2-110. Special surplus required. In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by 33-2-109, special surplus shall be possessed by insurers as follows:

(1) All stock insurers and mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than 5 years or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than 5 years when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than 100% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal) otherwise required under 33-2-109 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance as authorized insurers in one or more states of the United States for more than 5 years shall possess, when first authorized in this state, surplus or additional surplus equal to not less than 50% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) otherwise required under 33-2-109.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than $100,000, in addition to the capital (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) required by 33-2-109. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subsections (1) and (2) of this section.

History: En. Sec. 53, Ch. 286, L. 1959; R.C.M. 1947, 40-2808; amd. Sec. 3, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "mutual" for "foreign mutual" in four places.

33-2-111. Deposit requirement. (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit shall be in the amount of $100,000;

(b) foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, among other reasonable purposes of protection of policyholders and/or creditors, of the protection of all its policyholders or policyholders and creditors in Montana;

(c) alien insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers shall be made as provided in 33-2-531.

(4) Deposits made in this state shall further be subject to the provisions of part 6 of this chapter.

History: **En. Sec. 54, Ch. 286, L. 1959; R.C.M. 1947, 40-2809; amd. Sec. 1, Ch. 238, L. 1979.**

33-2-112. Management qualifications and affiliations. The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by him to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith.

History: **En. Sec. 55, Ch. 286, L. 1959; R.C.M. 1947, 40-2810.**

33-2-113 and 33-2-114 reserved.

33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application therefor accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of December 31 next preceding, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that such rates as applicable will be those promulgated by designated rating organizations authorized to file such rates in this state on behalf of the insurer.

History: **En. Sec. 56, Ch. 286, L. 1959; R.C.M. 1947, 40-2811.**

33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority. If he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner.

History: **En. Sec. 57, Ch. 286, L. 1959; R.C.M. 1947, 40-2812; amd. Sec. 4, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Increased the time specified in (1) from 30 to 180 days.

33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority. (1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated; subject, however, to continuance of the certificate by the insurer each year by payment prior to May 15 of the continuation fee provided in 33-2-708.

(2) If not so continued by the insurer, its certificate of authority shall expire as at midnight on May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer

of the occurrence of any such failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in such expiration and upon payment by the insurer of the fee for reinstatement in addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers.

History: En. Sec. 58, Ch. 286, L. 1959; R.C.M. 1947, 40-2813.

Cross-References

Failure to report — revoke or refuse to reinstate certificate, 33-2-701.

33-2-118. Mandatory revocation or suspension of certificate of authority. (1) The commissioner shall suspend or revoke an insurer's certificate of authority if:

(a) such action is required by any provision of this code;

(b) the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) Except in cases of insolvency or impairment of required capital or surplus or suspension or revocation by another state as referred to in subsection (1)(c) above, the commissioner shall give the insurer at least 15 days' notice in advance of any such suspension or revocation under this section.

History: En. Sec. 59, Ch. 286, L. 1959; R.C.M. 1947, 40-2814.

Cross-References

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks, resident or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

History: En. Sec. 60, Ch. 286, L. 1959; R.C.M. 1947, 40-2815; amd. Sec. 5, Ch. 303, L. 1981; amd. Sec. 2, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(b); and deleted former (2)(f), which read: "has reinsured all its risks in their entirety in another insurer".

1981 Amendment: Added subsection (2)(f) (now deleted).

Cross-References

Hearings by Commissioner, Title 33, ch. 1, part 7.

Grounds for rehabilitation of insurer, 33-2-1331.

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-120. Notice of suspension or revocation — effect upon agent's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall forthwith give notice thereof to the insurer and to its agents in this state of record in the commissioner's office.

(2) Such suspension or revocation shall likewise automatically suspend or revoke, as the case may be, the authority of all such agents to act as agents of the insurer in this state, and the commissioner shall so state in the notice to agents provided for in subsection (1).

(3) In his discretion the commissioner may also publish notice of such revocation in one or more newspapers of general circulation published in this state.

History: En. Sec. 61, Ch. 286, L. 1959; R.C.M. 1947, 40-2816.

33-2-121. Duration of suspension — insurer's obligations — reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as is fixed by the commissioner in the order of suspension but not to exceed 1 year. During the suspension the commissioner may shorten the period thereof by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not been terminated, the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed or that the insurer is otherwise not in compliance with the requirements of this code, and of which the commissioner shall give the insurer notice not less than 30 days in advance of the expiration of such period. If not so automatically reinstated, the certificate of authority shall be deemed to have expired as at the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period, whichever event shall first occur.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate.

(5) The commissioner shall forthwith notify both the insurer and its agents in this state, as shown by his records, of such reinstatement.

History: En. Sec. 62, Ch. 286, L. 1959; R.C.M. 1947, 40-2817.

Part 2

State of Entry — Trusteed Assets of Alien Insurers

Part Cross-References

Annual report — alien insurers — additional requirements, 33-2-701.

33-2-201. Scope of part. This part applies to all alien insurers using Montana as a state of entry to transact insurance in the United States.

History: En. Sec. 599, Ch. 286, L. 1959; R.C.M. 1947, 40-5201.

33-2-202. Required deposit of assets. (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under 33-2-111(1) and shall consist of cash and/or securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under part 8 of this chapter.

(3) Such a deposit may be referred to as "trusteed assets".

History: En. Sec. 600, Ch. 286, L. 1959; R.C.M. 1947, 40-5202.

33-2-203. Existing trusts. All trusts of trusteed assets created before January 1, 1961, and existing on that date shall be continued under the instruments creating them unless inconsistent with the provisions of this part.

History: En. Sec. 601, Ch. 286, L. 1959; R.C.M. 1947, 40-5203.

33-2-204. Purpose and duration. The deposit required by 33-2-202 shall be for the benefit, security, and protection of the policyholders or policyholders and creditors of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

History: En. Sec. 602, Ch. 286, L. 1959; R.C.M. 1947, 40-5204.

Cross-References

Purposes of deposits, 33-2-602.

33-2-205. Trust agreement — approval. (1) The deposit referred to in 33-2-202 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and shall be authenticated in such form and manner as the commissioner may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement found by him not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or policyholders and creditors in the United States.

History: En. Sec. 603, Ch. 286, L. 1959; R.C.M. 1947, 40-5205.

33-2-206. Authority to execute trust agreement. An alien insurer using or proposing to use Montana as a state of entry to transact insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this part.

History: En. Sec. 604, Ch. 286, L. 1959; R.C.M. 1947, 40-5206.

33-2-207. Amendment of trust agreement. A trust agreement may be amended, but the amendment shall not be effective until filed with and approved in writing by the commissioner as being in compliance with this part.

History: En. Sec. 605, Ch. 286, L. 1959; R.C.M. 1947, 40-5207.

33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment thereof may be withdrawn by the commissioner if he finds upon hearing, after notice thereof to the insurer and the trustee or trustees, that the requisites for such approval, as provided in this part, no longer exist.

History: En. Sec. 606, Ch. 286, L. 1959; R.C.M. 1947, 40-5208.

Cross-References

Hearing and notice requirements, Title 33, ch. 1, part 7.

33-2-209. Title to trusteed assets. Title to the trusteed assets is vested in the trustee or trustees and their successors for the purposes of the trust deposit, and the trust agreement shall so provide.

History: En. Sec. 607, Ch. 286, L. 1959; R.C.M. 1947, 40-5209.

33-2-210. Assets kept separate. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record thereof sufficient to identify trusteed assets at all times.

History: En. Sec. 608, Ch. 286, L. 1959; R.C.M. 1947, 40-5210.

33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee fails to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

History: En. Sec. 609, Ch. 286, L. 1959; R.C.M. 1947, 40-5211.

33-2-212. Examination of assets. The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures as govern the examination of insurers in general under chapter 1 of this title.

History: En. Sec. 610, Ch. 286, L. 1959; R.C.M. 1947, 40-5212.

Cross-References

Revocation of certificate of authority, 33-2-118, 33-2-119.

33-2-213. Withdrawal of assets. (1) The trust agreement shall provide, in substance, that no withdrawals of trusteed assets shall be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance thereof, except as follows:

(a) any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) for substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part 8 of this chapter, if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body and a copy of such authority has been filed with the trustee;

(c) for the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under 33-2-111(1)(c)(i) and (ii). The trustee shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depositary required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) for the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under 33-2-202 or as may otherwise be consistent with the provisions of this part.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less in amount than as required under 33-2-111(1)(c), upon determination thereof the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under (a), (b), and (c) of subsection (1) above, and the trustee shall comply with such order and until the further order of the commissioner.

History: **En. Sec. 611, Ch. 286, L. 1959; R.C.M. 1947, 40-5213.**

33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution shall be subject to the commissioner's approval.

(2) If the trustees of any trusteed assets heretofore created are individuals and if the number of such trustees is reduced to less than three by death, resignation, or otherwise, the commissioner shall require that there be substituted for such trustees a bank or trust company in this state approved by him.

History: **En. Sec. 612, Ch. 286, L. 1959; R.C.M. 1947, 40-5214.**

33-2-215. Canadian insurers. The provisions of this part applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of such a Canadian insurer.

History: **En. Sec. 613, Ch. 286, L. 1959; R.C.M. 1947, 40-5215.**

Part 3

Authorization of Surplus Line Insurers, Agents, and Insurance

33-2-301. Short title. This part constitutes and may be referred to as "The Surplus Line Insurance Law".

History: **En. Sec. 184, Ch. 286, L. 1959; R.C.M. 1947, 40-3409.**

33-2-302. Conditions precedent to sale of surplus line insurance — agent's affidavit. (1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:

(a) The insurance must be procured through a licensed surplus line agent.

(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from a majority of the insurers authorized to transact that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.

(c) The insurance must not be so procured for the purpose of securing advantages either as to:

(i) a lower premium rate than would be accepted by an authorized insurer; or

(ii) terms of the insurance contract.

(2) At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in subsection (1) and file such affidavit with the commissioner. Affidavits filed under this subsection shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise.

History: En. Secs. 185, 186, Ch. 286, L. 1959; R.C.M. 1947, 40-3410, 40-3411; amd. Sec. 1, Ch. 112, L. 1979.

Cross-References

Public inspection of official documents, Art. II, sec. 9, Mont. Const.; 2-6-102, 2-6-104.

33-2-303. Endorsement of contract. Every insurance contract, cover, note, or certificate of insurance procured and delivered as a surplus line coverage under this law shall be endorsed as having been "issued in an unauthorized insurer under The Surplus Line Insurance Law, under agent's license No. .....". The surplus line agent shall properly fill in and sign the endorsement.

History: En. Sec. 187, Ch. 286, L. 1959; R.C.M. 1947, 40-3412.

33-2-304. Surplus line insurance valid. Insurance contracts procured as "surplus line" coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 188, Ch. 286, L. 1959; R.C.M. 1947, 40-3413.

Cross-References

Exception to certificate of authority requirement, 33-2-102.

33-2-305. Licensing of surplus line agent — fee and bond. Any person, while licensed as a resident insurance agent of this state as to property, casualty, and surety insurances and who is deemed by the commissioner to be qualified therefor by insurance experience and to be trustworthy, may be licensed as a surplus line agent as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

(2) License fee in the amount stated in 33-2-708 shall be paid to the commissioner. The license shall expire on the April 1 next after its date of issue.

(3) Prior to issuance of license, the applicant shall file with the commissioner and thereafter for as long as the license remains in effect he shall keep in force a bond in favor of the state of Montana in the penal sum of $2,000, with authorized corporate sureties approved by the commissioner. The bond shall be conditioned that the agent will conduct business under the license in accordance with the provisions of The Surplus Line Insurance Law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least 30 days' prior written notice thereof is filed with the commissioner.

History: En. Sec. 189, Ch. 286, L. 1959; R.C.M. 1947, 40-3414.

Cross-References

Licensure of agents, Title 33, ch. 17, part 2.

33-2-306. Agent's authority under license — acceptance of business from other agents. (1) Under a surplus line agent's license the licensee shall have the right to place surplus line coverages, in compliance with The Surplus Line Insurance Law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state and as to such coverages to act as agent in this state for such insurer or insurers.

(2) The surplus line agent may accept surplus line business from any duly licensed agent of an authorized insurer and may compensate him therefor.

History: En. Sec. 190, Ch. 286, L. 1959; R.C.M. 1947, 40-3415.

33-2-307. Surplus lines in solvent insurers. A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:

(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which meets the requirements of 33-2-109 and 33-2-110, as applicable; or

(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least $1 million within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

History: En. Sec. 191, Ch. 286, L. 1959; R.C.M. 1947, 40-3416; amd. Sec. 6, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "meets the requirements of 33-2-109 and 33-2-110, as applicable" for "if a stock insurer, has capital stock and surplus of at least $350,000 or, if any other type of insurer, has surplus of at least $350,000" in (1); increased the amount in (2) from $400,000 to $1 million.

33-2-308. Evidence of the insurance — changes — penalty. (1) Upon placing a surplus line coverage, the surplus line agent shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate of insurance signed or countersigned by the agent. Such certificate shall show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original certificate or in any other material respect as to the insurance coverage evidenced by the certificate, the agent shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as

reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the certificate theretofore issued.

(4) Any surplus line agent who knowingly or negligently issues or delivers a false certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

History: En. Sec. 192, Ch. 286, L. 1959; R.C.M. 1947, 40-3417.

33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus line risk which has been assumed by an unauthorized insurer pursuant to this surplus lines insurance law and if the premium thereon has been received by the surplus line agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage. The insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus line agent.

(2) Each unauthorized insurer assuming a surplus lines direct risk under this surplus line insurance law shall be deemed thereby to have subjected itself to the terms of this section.

History: En. Sec. 193, Ch. 286, L. 1959; R.C.M. 1947, 40-3418.

33-2-310. Records and annual statement. (1) Each surplus line agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each certificate of insurance issued by him. The records shall be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the coverage to which it relates.

(2) Prior to April 1 of each year the agent shall file with the commissioner a statement for the calendar year preceding, showing:

(a) name and address of each insured for whom surplus line insurance was procured;

(b) name and home office address of each insurer providing such insurance;

(c) amount of each such coverage, the premium rate, and the gross premium charged therefor;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken; and

(f) such additional information as the commissioner may reasonably require.

History: En. Sec. 194, Ch. 286, L. 1959; R.C.M. 1947, 40-3419.

Cross-References

Reports, fees, and taxes, Title 33, ch. 2, part 7.

33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in subsection (2)(b)(i) of 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: **En. Sec. 195, Ch. 286, L. 1959; R.C.M. 1947, 40-3420; amd. Sec. 2, Ch. 664, L. 1979.**

33-2-312. Penalty for failure to file statement or pay tax. Every surplus line agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 shall be liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected shall be paid to the state treasurer and placed to the credit of the general fund. The surplus line agent's license shall also be subject to revocation as provided in 33-2-313.

History: **En. Sec. 196, Ch. 286, L. 1959; R.C.M. 1947, 40-3421.**

Cross-References

Duties of Attorney General, 2-15-501.

33-2-313. Revocation of agent's license. (1) The commissioner shall revoke or suspend any surplus line agent's license, together with his license as an insurance agent or solicitor:

(a) if the agent fails to file his annual statement or to remit the tax as required by law;

(b) if the agent fails to keep the records or to allow the commissioner to examine his records, as required by law;

(c) if the agent falsifies the affidavit required by 33-2-302(2); or

(d) for any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of agents' licenses shall be applicable to suspension or revocation of a surplus line agent's license.

(3) No agent whose license has been so revoked or suspended shall again be so licensed within 1 year thereafter or until all penalties and delinquent taxes owing by him have been paid.

History: **En. Sec. 197, Ch. 286, L. 1959; R.C.M. 1947, 40-3422.**

Cross-References

Records required, 33-2-310.

Tax to be remitted, 33-2-311.

Insurance agent's license — grounds for revocation, 33-17-1001.

33-2-314. Actions against insurer — venue — service of process. Every unauthorized insurer issuing a surplus line coverage under this surplus line insurance law shall be deemed to be doing business in this state as an unlicensed insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit shall be brought in the district court of the county wherein the plaintiff resides.

History: En. Sec. 198, Ch. 286, L. 1959; R.C.M. 1947, 40-3423.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-2-315. Commissioner appointed process agent — service of process. (1) Every surplus line insurer before insuring as such under this law shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer shall be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603.

History: En. Sec. 199, Ch. 286, L. 1959; R.C.M. 1947, 40-3424.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-2-316. Rules. (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this surplus line insurance law, for any or all of the following purposes:

(a) effectuation of such law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus line insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313.

History: En. Sec. 200, Ch. 286, L. 1959; R.C.M. 1947, 40-3425.

Cross-References

Montana Administrative Procedure Act — promulgation of rules, Title 2, ch. 4.

Promulgation of rules by Commissioner, 33-1-313.

33-2-317. Exemptions. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance agents of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.

History: **En. Sec. 201, Ch. 286, L. 1959; R.C.M. 1947, 40-3426.**

Part 4 reserved

Part 5

Assets and Liabilities — Reserves

33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless such amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest thereon;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectable asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. In no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

(f) rent due or accrued on real property if such rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under 33-2-1205;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) electronic data processing equipment if the cost of such equipment is at least $100,000, which cost shall be amortized in full over a period of not to exceed 10 calendar years. However, with regard to life insurers, such equipment shall be allowed as an asset if the cost of such equipment is at least $25,000, which cost shall be amortized in full over a period of not to exceed 5 calendar years, and the amount of such asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein;

(13) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

History: En. Sec. 82, Ch. 286, L. 1959; R.C.M. 1947, 40-3001; amd. Sec. 1, Ch. 570, L. 1979.

Cross-References

Net premium tax — admitted assets, 33-2-705.

Investments allowed of domestic insurers, Title 33, ch. 2, part 8.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers (other than policy loans), whether secured or not, and advances to employees, agents, and other persons on personal security only;

(3) stock of such insurer, owned by it, or any equity therein or loans secured thereby or any proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures (other than electronic data processing machines authorized under 33-2-501(11)), furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, such materials and plants as the insurer is expressly authorized to invest in under 33-2-851; and

(b) in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to part 8 of this chapter or which is acquired through foreclosure of chattel mortgages acquired pursuant to 33-2-831 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

History: **En. Sec. 84, Ch. 286, L. 1959; R.C.M. 1947, 40-3003.**

33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

History: **En. Sec. 83, Ch. 286, L. 1959; R.C.M. 1947, 40-3002.**

33-2-504 through 33-2-510 reserved.

33-2-511. Liabilities chargeable against assets. In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) the amount of its capital stock outstanding, if any;

(2) the amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof;

(3) with reference to life and disability insurance and annuity contracts:

(a) the amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto;

(b) reserves for disability benefits, for both active and disabled lives;

(c) reserves for accidental death benefits;

(d) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the national association of insurance commissioners, on account of such insurance;

(4) with reference to insurance other than specified in subsection (3) of this section and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part;

(5) taxes, expenses, and other obligations due or accrued at the date of the statement.

History: **En. Sec. 85, Ch. 286, L. 1959; R.C.M. 1947, 40-3004.**

33-2-512. Unearned premium reserve for property, casualty, and surety. (1) As to insurance against loss or damage to property, except as provided in 33-2-513, and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less	1/2
2 years	1st year 3/4
	2nd year 1/4
3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6
4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
Over 5 years	pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the commissioner.

(5) This section does not apply to title insurance.

History: En. Sec. 86, Ch. 286, L. 1959; R.C.M. 1947, 40-3005.

Cross-References

Title insurance reserves, 33-2-517.

33-2-513. Unearned premium reserve for marine and transportation insurance. As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve equal to 100% of premiums on trip risks written during the month ended as of the date of statement.

History: En. Sec. 87, Ch. 286, L. 1959; R.C.M. 1947, 40-3006.

33-2-514. Reserve for disability insurance. For all disability insurance policies, the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

History: **En. Sec. 88, Ch. 286, L. 1959; R.C.M. 1947, 40-3007.**

33-2-515. Loss reserves for liability insurance and workers' compensation. Where required in the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable shall be computed as follows:

(1) For all liability suits being defended under policies written more than:

(a) 10 years prior to the date as of which the statement is made, $1,500 for each suit;

(b) 5 or more and less than 10 years prior to the date as of which the statement is made, $1,000 for each suit;

(c) 3 or more and less than 5 years prior to the date as of which the statement is made, $850 for each suit.

(2) For all liability policies written during the 3 years immediately preceding the date as of which the statement is made, the reserve shall be 60% of the earned liability premiums of each of such 3 years less all losses and expense payments made under liability policies written in the corresponding years. In any event, such reserve shall for the first of such 3 years be not less than $750 for each outstanding liability suit on such year's policies.

(3) For all workers' compensation claims under policies written more than 3 years prior to the date as of which the statement is made, the reserve shall be the present value at 4% interest of the determined and the estimated future payments.

(4) For all workers' compensation claims under policies written in the 3 years immediately preceding the date as of which the statement is made, such reserve shall be 65% of the earned compensation premiums of each of such 3 years less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such 3-year period, such reserve shall be not less than the present value at 4% interest of the determined and the estimated unpaid compensation claims under policies written during such year.

History: **En. Sec. 89, Ch. 286, L. 1959; R.C.M. 1947, 40-3008.**

33-2-516. Inadequate reserves — increase required. If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

History: **En. Sec. 90, Ch. 286, L. 1959; R.C.M. 1947, 40-3009.**

33-2-517. Title insurance reserves. (1) In addition to an adequate reserve as to outstanding losses as required under 33-2-511, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract shall be reduced by 5% of the original amount of such reserve.

(2) The sums herein required to be reserved for unearned premiums on contracts of title insurance shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) of this section shall be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) of this section. In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976.

History: En. Sec. 91, Ch. 286, L. 1959; amd. Sec. 1, Ch. 96, L. 1977; R.C.M. 1947, 40-3010.

Cross-References

Special investments — treatment, 33-2-851.

Title insurance — general provisions, Title 33, ch. 25.

33-2-518 through 33-2-520 reserved.

33-2-521. Standard valuation of reserve liabilities law — life insurance. (1) The commissioner shall annually value or cause to be valued the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States.

(2) For the purpose of making such valuation, the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according

to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum herein provided.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(1).

33-2-522. Contracts prior to the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued prior to the operative date of 33-20-213.

(2) Except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at 3 ½% per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at 3 ½% per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from the date of the policy or under an endowment preliminary term policy exceeds that charged for life insurance under 20-payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

(3) Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(2).

33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524 and 33-2-525, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in 33-2-525 and 32-2-526(3), 5% interest for group annuity and pure endowment contracts, and 3 ½% interest for all other such policies and contracts or, in the case of policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for such policies issued prior to July 1, 1979, and 4 ½% interest for such policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioner's 1941 standard ordinary mortality table:

(i) for such policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after that operative date but prior to January 1, 1989, except that for any category of such policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for such policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of 33-20-207, as amended, and for such policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, such tables as may be approved by the commissioner.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 1, Ch. 346, L. 1979; amd. Sec. 1, Ch. 520, L. 1983.

Compiler's Comments

1983 Amendment: In (2) in lead-in, after "33-2-524" inserted "and 33-2-525"; in (2)(a)(i) after "that operative date" inserted "but prior to January 1, 1989"; inserted (2)(a)(ii); in (2)(b) after "as amended, and" deleted "the commissioner's 1961 standard industrial mortality table" and after "that operative date" inserted remainder of subsection; in (2)(e)(i)(A) after "benefit" inserted language from "or any tables" through end of subsection; and in (2)(f)(i)(A) after "1959 accidental death benefits table" inserted language from "or any accidental" through end of subsection.

33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) Except as provided in 33-2-527, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date under group annuity and pure endowment contracts is the commissioner's reserve valuation methods defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single-premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual single-premium immediate annuity contracts issued on or after July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 7 ½% interest;

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1979, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 5 ½% interest for single-premium deferred annuity and pure endowment contracts and 4 ½% interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(e) for all annuities and pure endowments purchased on or after July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any group annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such annuities and pure endowments or any modification of such tables approved by the commissioner and 7 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection (1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 9, Ch. 198, L. 1979; amd. Sec. 2, Ch. 346, L. 1979; amd. Sec. 2, Ch. 520, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted proviso at beginning of subsection; in (1)(b) and (1)(c) after "1971 individual annuity mortality table" inserted clause relating to any individual annuity mortality table adopted after 1980 beginning with "or any" through "for such contracts"; and in (1)(e) inserted clause relating to any group annuity mortality table adopted after 1980 beginning with "or any" through "and pure endowments"; and made minor changes in phraseology.

33-2-525. Commissioner's reserve valuation method. (1) Except as otherwise provided in subsection (4) and 33-2-526(3), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy;

(b) a net 1-year term premium for such benefits provided for in the first policy year.

(2) (a) For every life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of such policy anniversary calculated as described in subsection (1) or the reserve as of such policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of such excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on such assumed ending date as an endowment; and

(iv) the cash surrender value provided on such assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and 33-2-527 must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of such contract that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 3, Ch. 346, L. 1979; amd. Sec. 6, Ch. 520, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

33-2-526. Limits — options — minimum reserves. (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525 and subsection (3) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) Reserves for any category of policies, contracts, or benefits as established by the commissioner may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of

interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for such policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of such a policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 4, Ch. 346, L. 1979; amd. Sec. 7, Ch. 520, L. 1983.

Compiler's Comments

1983 Amendment: In (3), inserted last sentence; and inserted (4).

33-2-527. Interest rates — determination of minimum standard valuation. (1) The calendar year statutory valuation interest rates as established in this section must be used in determining the minimum standard for the valuation of:

(a) all life insurance policies issued in a particular calendar year on or after January 1, 1989;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

(2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are determined as follows and the results rounded to the nearer ¼ of 1%, when R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate established in 33-2-529, and W is the weighting factor established in 33-2-528:

(a) for life insurance:

Interest rate $= .03 + W(R_1 - .03) + (W/2)(R_2 - .09)$;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Interest rate = .03 + W(R - .03);

(c) for other annuities with:

(i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

(iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

(3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than ½ of 1%, the calendar year statutory valuation interest rate for such life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined for each subsequent calendar year regardless of when 33-20-208 becomes operative.

History: En. Sec. 3, Ch. 520, L. 1983.

33-2-528. Interest rate weighting factor. (1) The weighting factors referred to in the formulas stated in 33-2-527 are as follows:

(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in subsection (2) and the type of plan established in subsection (3):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

	Plan Type A	B	C
(ii) for annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subsection (1)(c)(i) increased by:	.15	.25	.05

	Plan Type A	B	C
(iii) for annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) that do not guarantee interest on considerations received more than 1 year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors set forth in subsection (1)(c)(i) or derived in subsection (1)(c)(ii) increased by:	.05	.05	.05

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(3) Plan types used in subsection (1)(c) are:

(a) Plan Type A—No withdrawal is permitted or at any time policyholder may withdraw funds only:

(i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(ii) without such adjustment but in installments over 5 years or more; or

(iii) as an immediate life annuity.

(b) Plan Type B—(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or a policyholder may withdraw funds only:

(A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(B) without such adjustment but in installments over 5 years or more.

(ii) At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than 5 years.

(c) Plan Type C—A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than 5 years either:

(i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(b) As used in subsection (4):

(i) issue year basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

(ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

History: **En. Sec. 4, Ch. 520, L. 1983.**

33-2-529. Reference interest rate. (1) The reference interest rate referred to in the formulas in 33-2-527 is:

(a) for all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(e) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates; or

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates.

(2) If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's investors service, inc., or if the national association of insurance commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the national association of insurance commissioners and approved by the commissioner may be substituted.

History: **En. Sec. 5, Ch. 520, L. 1983.**

33-2-530 reserved.

33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired and valued in accordance with parts 5 and 8 of this chapter.

(5) Real estate mortgage loans, chattel mortgage loans, and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. If the insurer uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a security interest in such real estate, in a form acceptable to the commissioner, shall be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and such default continues for a period of 120 days, the commissioner may declare such security no longer eligible for deposit under this section.

History: En. Sec. 93, Ch. 286, L. 1959; R.C.M. 1947, 40-3012; amd. Sec. 2, Ch. 570, L. 1979; amd. Sec. 1, Ch. 427, L. 1981.

Compiler's Comments

1981 Amendment: In subsection (4), inserted "and valued" after "acquired", changed "part 8" to "parts 5 and 8", and deleted "except that securities acquired under 33-2-829 are not eligible for deposit" after "of this chapter" at the end of the subsection.

Cross-References

Deposit requirement, 33-2-111.

Deposits — general provisions, Title 33, ch. 2, part 6.

Duration and release of deposit, 33-2-612.

Diversification of investments, 33-2-806.

Mortgages of real property, Title 71, ch. 1, part 2.

Deeds of trust, Title 71, ch. 1, part 3.

33-2-532. Valuation of bonds. (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(b) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of such securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section.

History: En. Sec. 94, Ch. 286, L. 1959; R.C.M. 1947, 40-3013.

33-2-533. Valuation of other securities. (1) Securities, other than those referred to in 33-2-532, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by him as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

History: En. Sec. 95, Ch. 286, L. 1959; R.C.M. 1947, 40-3014.

33-2-534. Valuation of property. (1) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, the cost of improvements thereafter made by the insurer, and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than 3 years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with 33-2-831 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

History: **En. Sec. 96, Ch. 286, L. 1959; R.C.M. 1947, 40-3015.**

33-2-535. Valuation of purchase money mortgages. Purchase money mortgages on real property referred to in 33-2-534(1) shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

History: **En. Sec. 97, Ch. 286, L. 1959; R.C.M. 1947, 40-3016.**

33-2-536. Undeterminable reserves — rules by commissioner. If a plan of life insurance provides for future premium determination the amounts of which are to be determined by the insurance company based on current estimates of future experience or if a plan of life insurance or annuity is of such a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526, the reserves that are held under any such plan must, as determined by regulations promulgated by the commissioner:

(1) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) be computed by a method which is consistent with the principles of 33-2-521 through 33-2-526 and 33-2-531 through 33-2-535 and 33-2-527 through 33-2-529.

History: **En. Sec. 8, Ch. 520, L. 1983.**

Part 6

Deposits

33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner shall be accepted and held and shall be subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country;

(3) deposits of reserves made by domestic life insurers under 33-2-531;

(4) deposits in such additional amounts as are permitted to be made under 33-2-609.

History: **En. Sec. 132, Ch. 286, L. 1959; R.C.M. 1947, 40-3201.**

Cross-References
Deposit requirement — general provision, 33-2-111.

33-2-602. Purpose of deposit. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under 33-2-111 shall be held for the purpose stated in such section.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of such other state, province, or country shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

(3) Deposits of reserves made by domestic life insurers under 33-2-531 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts.

(4) Deposits required pursuant to the retaliatory law, 33-2-709, shall be held for such purposes as is required by such law and as specified by the commissioner's order requiring such deposit to be made.

History: En. Sec. 133, Ch. 286, L. 1959; R.C.M. 1947, 40-3202.

Cross-References
Alien insurers — deposit of trusteed assets, 33-2-202.

33-2-603. Securities eligible for deposit. (1) All such deposits required under 33-2-111 for authority to transact insurance in this state shall consist of certificates of deposit or any combination of securities of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country shall be comprised of assets of the kinds described in subsection (1) above and of such additional kind or kinds of securities required or permitted by the laws of such state, province, or country except common stocks, mortgages of any kind, and real estate.

(3) Deposits of the reserves of a domestic life insurer shall consist of securities and assets as provided under 33-2-531.

(4) Deposits of foreign insurers made in this state under the retaliatory law, 33-2-709, shall consist of such assets as are required by the commissioner pursuant to such law.

History: En. Sec. 134, Ch. 286, L. 1959; R.C.M. 1947, 40-3203.

33-2-604. Depositary or custodian. (1) Deposits made in this state under this code shall be made through the office of the commissioner in safe deposit or under custodial arrangements as required or approved by the commissioner consistent with the purposes of such deposit, with an established safe deposit institution, bank, or trust company located in the city of Helena, state of Montana, selected by the insurer with the commissioner's approval.

(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the

same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing thereon, the insurer may, with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state, so long as receipts representing all such securities are issued by such custodian bank or trust company and are held in safe deposit or custody subject to the requirements of subsections (1) and (2) of this section.

(4) The form and terms of all such depositary or custodial agreements shall be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

(5) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

History: **En. Sec. 135, Ch. 286, L. 1959; R.C.M. 1947, 40-3204.**

33-2-605. Record of deposits — liability of commissioner and state. (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

(3) The commissioner and the state of Montana shall have no liability as to the safekeeping of any such deposit by the depositary or custodian thereof.

History: **(1), (2)En. Sec. 136, Ch. 286, L. 1959; Sec. 40-3205, R.C.M. 1947; (3)En. Sec. 137, Ch. 286, L. 1959; Sec. 40-3206, R.C.M. 1947; R.C.M. 1947, 40-3205, 40-3206.**

33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code shall be duly assigned to the commissioner and his successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for such securities shall be so delivered, if negotiable, or assigned to the commissioner if thereby legal title to such securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and his successors in office all other assets so deposited. Upon release to the insurer of any such asset or security, the commissioner shall reassign or transfer or reconvey the same to the insurer.

History: **En. Sec. 138, Ch. 286, L. 1959; R.C.M. 1947, 40-3207.**

Cross-References

Security in real property — domestic life insurers — transferability requirements, 33-2-531.

33-2-607. Appraisal. The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

History: En. Sec. 139, Ch. 286, L. 1959; R.C.M. 1947, 40-3208.

Cross-References

Domestic life insurers — reserves valuation, 33-2-532 through 33-2-535.

33-2-608. Rights of insurer during solvency. So long as the insurer remains solvent and is in compliance with this code it may:

(1) demand, receive, sue for, and recover the income from the assets or securities deposited;

(2) exchange and substitute for the deposited assets or securities, or any part thereof, other eligible assets or securities of equivalent or greater value; and

(3) at any reasonable time inspect any such deposit.

History: En. Sec. 140, Ch. 286, L. 1959; R.C.M. 1947, 40-3209.

Cross-References

Insolvency — supervision by Commissioner, 33-2-1321.

33-2-609. Excess deposits. An insurer may so deposit and have on deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 20% of such required or permitted deposit or $50,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of assets and securities deposited and to facilitate the exchange and substitution of such assets and securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in 33-2-612(4).

History: En. Sec. 141, Ch. 286, L. 1959; R.C.M. 1947, 40-3210.

33-2-610. Levy upon deposit. No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits pursuant to the retaliatory law, 33-2-709, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is made.

History: En. Sec. 142, Ch. 286, L. 1959; R.C.M. 1947, 40-3211.

33-2-611. Deficiency of deposit — revocation of certificate. If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604(3) falls below the amount required under this code to be so held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in amount sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered or certified mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

History: En. Sec. 143, Ch. 286, L. 1959; R.C.M. 1947, 40-3212.

Cross-References

Revocation of certificate of authority, 33-2-118.

33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit required under the retaliatory law, 33-2-709, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon:

(a) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred, and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law, and, unless the insurer is required so to deposit and maintain on deposit all of its reserves, that such deposit of such reserves will be so deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts so reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by such insurer when such insurer has ceased transacting insurance in this state or in the United States and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

History: En. Sec. 144, Ch. 286, L. 1959; R.C.M. 1947, 40-3213; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (4).

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.; 2-9-102.

Immunization and indemnification of public officers, 2-9-305.

Part 7

Reports, Fees, and Taxes

Part Cross-References
Report of surplus line agent, 33-2-310.

33-2-701. Annual statement — revocation for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement shall be in such general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement shall be verified by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may, in his discretion, waive any such verification under oath.

(2) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible. The statement shall be verified by the insurer's United States manager or other officer duly authorized.

(3) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due.

(4) Any director, officer or agent, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more than $1,000.

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

History: En. Sec. 65, Ch. 286, L. 1959; amd. Sec. 1, Ch. 27, L. 1967; R.C.M. 1947, 40-2820.

Cross-References
Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.
Benevolent associations — additional requirements, 33-6-304.

33-2-702 through 33-2-704 reserved.

33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (4) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾% of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼% of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾% of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼% of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾% of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (2)(a) is not used, the insurer shall compute its tax at the rate of 2 ¾% of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, funds invested in certificates of deposit in a bank or building and loan association located in Montana and whose deposits are insured by an agency of the United States or an insurer approved by the department of commerce, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, authorized in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (4) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(part); amd. Sec. 1, Ch. 664, L. 1979; amd. Sec. 7, Ch. 303, L. 1981; amd. Sec. 12, Ch. 467, L. 1981; amd. Sec. 1, Ch. 295, L. 1983; amd. Sec. 3, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 295, in middle of (3)(b), inserted "funds invested in certificates of deposit in a bank or building and loan association located in Montana and whose deposits are insured by an agency of the United States or an insurer approved by the department of commerce".

Chapter 518, in (4)(a), deleted "inland marine" after "wet marine" and after "33-1-209" deleted "and 33-1-221 through 33-1-229".

1981 Amendments: Chapter 303 substituted "the total charge" for "only the risk portion of the charge" in the third sentence from the end of (1).

Chapter 467, in (1), substituted reference to "subsection (4)" for "subsection (3)"; in (4)(a), inserted "inland marine," after "wet marine," and substituted "authorized in 33-1-209 and 33-1-221 through 33-1-229" for "as defined in 33-1-209".

Cross-References

Not subject to corporate license tax, 15-31-101.

Allocation of certain casualty insurance tax — Municipal Police Officers' Retirement System, 19-10-305.

Allocation of certain casualty insurance tax — firefighters' pension and compensation, 19-11-512, 19-12-301.

Revocation of certificate of authority, 33-2-118, 33-2-119.

Tax on surplus lines, 33-2-311.

Not applicable to health service corporations, 33-30-203.

Tax on fire insurance premiums — State Fire Marshal, 50-3-109.

33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured through a surplus line agent pursuant to The Surplus Line Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 ¾% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectable from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or disability insurances.

History: En. Sec. 202, Ch. 286, L. 1959; amd. Sec. 1, Ch. 147, L. 1977; R.C.M. 1947, 40-3427.

33-2-707. Preemption of taxing. The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general agents and agents as such and on the intangible property of insurers or such agents. No county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general agents and agents as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(6).

Cross-References

No payment of corporate tax, 15-31-101.

33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers .... $ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state .. 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00

(iii) appointment of agent, each insurer 10.00

(iv) annual renewal, each insurer 10.00

(v) temporary license 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license 10.00

(f) nonresident agent's license:	
(i) application for original license, including issuance of license, if issued (life and/or disability)	100.00
(ii) application for original license, including issuance of license, if issued (other than life and/or disability)	100.00
(iii) appointment of agent, each insurer	10.00
(iv) annual renewal, each insurer	10.00
(v) amendment of license (excluding additions thereto) or reissuance of master license	10.00
(g) solicitor's license:	
(i) application for original license, including issuance of license, if issued	5.00
(ii) annual renewal of license	5.00
(h) examination for license as agent or solicitor, each examination	10.00
(i) surplus line agent's license:	
(i) application for original license and for issuance of license, if issued	25.00
(ii) annual renewal of license	25.00
(j) adjuster's license:	
(i) application for original license and for issuance of license, if issued	10.00
(ii) annual renewal of license	10.00
(k) insurance vending machine license, each machine, each year	10.00
(l) commissioner's certificate under seal (except when on certificates of authority or licenses)	3.00
(m) copies of documents on file in the commissioner's office, per page	.50
(n) policy forms:	
(i) filing each policy form	25.00
(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks	10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days	50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123.

History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. 1975; amd. Sec. 1, Ch. 322, L. 1977; R.C.M. 1947, 40-2726(1), (2); amd. Sec. 10, Ch. 198, L. 1979; amd. Sec. 1, Ch. 344, L. 1979; amd. Sec. 8, Ch. 303, L. 1981; amd. Sec. 1, Ch. 391, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near middle, after "state all", substituted remainder of sentence for "fees and licenses received by him under this section"; and inserted (4).

1981 Amendment: Increased the fee in (1)(e)(iii), (1)(e)(iv), (1)(f)(iii), and (1)(f)(iv) from $5 to $10; added subsections (1)(e)(vi), (1)(f)(v), and (3).

Cross-References

Fund structure, Title 17, ch. 2.

33-2-709. Retaliatory fees, taxes, and other obligations. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the agents or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers or upon the agents or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the agents or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to any fees in conjunction with the licensing of insurance agents, personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

History: En. Sec. 71, Ch. 286, L. 1959; R.C.M. 1947, 40-2826; amd. Sec. 9, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "any fees in conjunction with the licensing of insurance agents" after "This section shall not apply as to" near the beginning of (2).

Cross-References

Holding of retaliatory deposit, 33-2-602, 33-2-603.

Levy on retaliatory deposit by claimant or judgment debtor, 33-2-610.

Release of retaliatory deposit, 33-2-612.

33-2-710. Premium tax imposed on policy issued through nonresident licensee. Any insurer who issues a policy on a subject or risk located or to be performed in Montana through a nonresident licensee shall pay a premium tax on such policy to the state of Montana, in an amount and in the manner provided in 33-2-705.

History: En. Sec. 4, Ch. 395, L. 1983.

Cross-References

Nonresident licensee to pay taxes — annual report required, 33-17-407.

33-2-711. *(Temporary)* **Genetics program charge.** There is imposed upon every private health disability insurer and health service corporation and the state group health self-insurance plan under Title 2, chapter 18, part 8, an annual charge of 45 cents for each Montana resident insured under any individual or group policy in effect as of February 1 of each year for the purpose of funding the voluntary genetics program established in 50-19-211. Proceeds of the charge must be submitted to the commissioner on or before March 1 of each year and must be deposited in the state general fund. *(Terminates June 30, 1987—sec. 6, Ch. 706, L. 1985.)*

History: En. Sec. 2, Ch. 706, L. 1985.

33-2-712 through 33-2-720 reserved.

33-2-721. Product liability insurer — report. (1) Each insurance company doing business in this state that insures against product liability losses shall make and file with the department of insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to be prescribed and that may be furnished by the department.

(2) The report shall include the following information:

(a) the amount of product liability insurance premiums collected for the year, indicating the amount of premiums allocable to Montana and the total nationwide amount;

(b) information for product liability insurance experience, separately allocated to Montana and nationwide, showing the:

(i) total amount of earned premiums;

(ii) total amount of incurred losses, including all loss adjustment expense;

(iii) amount of reserves for both reported and unreported incurred losses; and

(iv) amount of other reserves for other product liability losses; and

(c) for any claim, loss, or action for bodily injury, death, or property damage allocated to Montana experience if there has been a final judgment or a settlement in any amount or if there has been a final disposition not resulting in a loss payment on behalf of the insured:

(i) a description of the type of product involved in each claim;

(ii) the date of occurrence from which each claim arose;

(iii) the state or other jurisdiction wherein each claim was adjudicated, settled, or other disposition made;

(iv) the date legal action commenced, if filed;

(v) a brief description of the occurrence out of which the claim arose;

(vi) the total number of all claims;

(vii) the total number of all claims closed without payments; and

(viii) such other information as the department may require.

History: En. Sec. 1, Ch. 615, L. 1979; amd. Sec. 1, Ch. 60, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (2)(c)(viii) and (2)(c)(ix), which required insurance companies to report the total number of judgments and verdicts in their annual products liability reports.

Cross-References

Casualty insurance, 33-1-206; Title 33, ch. 23.

33-2-722. Department to make reports available. The department of insurance shall make the reports required under 33-2-721 available to the public on request at a fee prescribed by the department, not to exceed reasonable costs, and in a manner that does not reveal the names of any manufacturer, distributor, seller, or other person involved.

History: En. Sec. 2, Ch. 615, L. 1979.

33-2-723. Insurer not liable for making report. No liability may arise against any insurer or against its agents or employees as a result of making a report pursuant to 33-2-721.

History: En. Sec. 3, Ch. 615, L. 1979.

Part 8

Investments

33-2-801. Scope of part. Except as to 33-2-852, this part shall apply to domestic insurers only.

History: En. Sec. 98, Ch. 286, L. 1959; R.C.M. 1947, 40-3101.

33-2-802. Eligibility of investments. (1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this part.

(2) Any particular investment held by an insurer on January 1, 1961, which was a legal investment at the time it was made and which the insurer was legally entitled to possess immediately prior to January 1, 1961, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2) above.

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding date of acquisition of the investment by the insurer or as shown by a current financial statement filed with the commissioner.

History: En. Sec. 99, Ch. 286, L. 1959; R.C.M. 1947, 40-3102.

33-2-803. General qualifications of investments. (1) No security or investment, other than real and personal property acquired under 33-2-832, shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of this part shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this part shall be disposed of pursuant to 33-2-842 if personal property or securities or pursuant to 33-2-841 if real property.

History: **En. Sec. 100, Ch. 286, L. 1959; R.C.M. 1947, 40-3103.**

33-2-804. Prohibited investments and investment underwriting. (1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not invest in or lend its funds upon the security of:

(a) issued shares of its own capital stock, except for the purpose of mutualization under 33-3-215;

(b) except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or after such acquisition by the insurer will be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under 33-2-822 shall not be subject to this provision.

(c) any note or other evidence of indebtedness of any director, officer, or controlling stockholders of the insurer, except as to policy loans authorized under 33-2-825.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

History: **En. Sec. 130, Ch. 286, L. 1959; R.C.M. 1947, 40-3133.**

Cross-References

Assets not allowed in determining financial condition of insurer, 33-2-502.

33-2-805. Authorization of investment or loan. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee shall be recorded, and regular reports of such committee shall be submitted to the board of directors.

History: **En. Sec. 101, Ch. 286, L. 1959; R.C.M. 1947, 40-3104.**

33-2-806. Diversification of investments. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer shall not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash and/or the securities or investments provided for under 33-2-531.

(5) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) An insurer may invest and have invested at any one time in aggregate amount not more than 10% of its assets in all stocks under 33-2-820, 33-2-821, and 33-2-824. Determination of the amount which an insurer has invested in common stocks for the purposes of this provision shall be based on the cost of such stocks to the insurer. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

(7) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 10% of its assets in the class of securities described in any one of the following sections: 33-2-814, 33-2-819, and 33-2-823.

(8) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

History: En. Sec. 102, Ch. 286, L. 1959; R.C.M. 1947, 40-3105.

Cross-References

Domestic stock insurers — general provisions, Title 33, ch. 3, part 1.

33-2-807 through 33-2-810 reserved.

33-2-811. United States or Canadian government obligations — loans guaranteed. (1) An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America or of Canada or for which the full faith and credit of the United States of America or of Canada is pledged for the payment of principal and interest.

(2) An insurer may invest in loans guaranteed as to principal and interest by the United States of America or Canada or by any agency or instrumentality of the United States of America or Canada.

History: (1)En. Sec. 103, Ch. 286, L. 1959; Sec. 40-3106, R.C.M. 1947; (2)En. Sec. 104, Ch. 286, L. 1959; Sec. 40-3107, R.C.M. 1947; R.C.M. 1947, 40-3106, 40-3107.

Cross-References
Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-812. State, county, municipal, and school obligations. An insurer may invest any of its funds in bonds or other evidences of indebtedness which are general obligations of or are secured by pledge of specific revenues by this state or of any other state of the United States or province of Canada or of any of the counties or incorporated cities or towns or duly organized school districts or other taxing districts of such states or provinces.

History: **En. Sec. 105, Ch. 286, L. 1959; R.C.M. 1947, 40-3108.**

Cross-References
Reserves — domestic life insurers — valuation of bonds, 33-2-532.
Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-2-813. Revenue bonds. An insurer may invest in bonds, notes, or evidences of indebtedness of any state of the United States or province of Canada or any political subdivision thereof or any agency or instrumentality of any of the foregoing, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on such obligations and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

History: **En. Sec. 106, Ch. 286, L. 1959; R.C.M. 1947, 40-3109.**

Cross-References
Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-814. Improvement district obligations. An insurer may invest in bonds, notes, or evidences of indebtedness issued by any local improvement district in this or any other state to finance local improvements authorized by law if the principal and interest of such obligations is payable from assessments on real property within such local improvement district. No such investment shall be made if the face value of all such obligations, together with all similar obligations of such improvement district outstanding, exceed 50% of the market value of the real property and improvements upon which such bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.

History: **En. Sec. 107, Ch. 286, L. 1959; R.C.M. 1947, 40-3110.**

Cross-References
Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-815. Irrigation district obligations. An insurer may invest in the bonds, notes, or evidences of indebtedness of any irrigation district organized under the laws of Montana.

History: **En. Sec. 108, Ch. 286, L. 1959; R.C.M. 1947, 40-3111.**

Cross-References
Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-816. Obligations or stock of certain federal agencies. An insurer may invest in the obligations and/or stock, where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government:

(1) commodity credit corporation;

(2) federal intermediate credit banks;

(3) federal land banks;

(4) central bank for cooperatives;

(5) federal home loan banks and stock thereof;

(6) federal national mortgage association and stock thereof when acquired in connection with sale of mortgage loans to such association;

(7) any other similar agency of the government of the United States of America and of similar financial quality.

History: En. Sec. 109, Ch. 286, L. 1959; R.C.M. 1947, 40-3112.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

Reserves — domestic life insurers — valuation of securities, 33-2-533.

Federal Housing Administration and National Mortgage Association — investment in authorized, 33-2-833.

33-2-817. International bank. An insurer may invest in obligations issued, assumed, or guaranteed by the international bank for reconstruction and development.

History: En. Sec. 110, Ch. 286, L. 1959; R.C.M. 1947, 40-3113.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-818. Corporate bonds and debentures. (1) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada or any state or province thereof, which are not in default as to principal or interest and which are secured by adequate collateral and bear fixed interest and if during each of any 3, including either of the last 2, of the 5 fiscal years next preceding the date of acquisition by the insurer the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than 1 ¼ times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of common stock.

(2) An insurer may invest in secured and unsecured obligations of such institutions, other than obligations described in subsection (1), bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by such insurer have averaged per year not less than 1 ½ times its average annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than 1 ½ times its fixed charges for such year.

(3) An insurer may invest in adjustment, income, or other contingent interest obligations of such institutions if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than 1 ½ times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings shall have been not less than 1 ½ times the sum of its fixed charges and maximum contingent interest for such year.

(4) Within the meaning of this section, the term "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal income taxes, depreciation, and depletion but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming, or guaranteeing institutions. The term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

History: **En. Sec. 111, Ch. 286, L. 1959; R.C.M. 1947, 40-3114.**

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-819. Preferred or guaranteed stock. An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States of America or of Canada or of any state or province thereof if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition of the investment by such insurer are eligible as investments under this part and if the net earnings of such institution available for its fixed charges during each of the last 2 years have been, and during each of the last 5 years have averaged, not less than 1 ½ times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements. For the purposes of this section such computation shall refer to the fiscal years immediately preceding the date of acquisition of the investment by the insurer, and the term "preferred dividend requirement" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

History: **En. Sec. 112, Ch. 286, L. 1959; R.C.M. 1947, 40-3115.**

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-820. Common stocks. An insurer may invest in nonassessable common stocks, other than insurance stocks, of any solvent corporation existing under the laws of the United States of America or of Canada or any state or province thereof if cash or stock dividends have been earned and paid on its common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section shall be based upon consolidation pro forma statements of the predecessor or constituent institutions.

History: En. Sec. 113, Ch. 286, L. 1959; R.C.M. 1947, 40-3116.

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-821. Insurance stocks. (1) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of 33-2-819 and 33-2-820.

(2) With the commissioner's consent, an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in 33-2-822.

History: En. Sec. 114, Ch. 286, L. 1959; R.C.M. 1947, 40-3117.

Cross-References

Ownership of own corporate stock, 33-2-502.

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-822. Stocks of subsidiaries. With the commissioner's consent, an insurer may invest in the stock of its subsidiary insurance corporation or in the stock of its subsidiary business corporation formed under the laws of this state and necessary and incidental to the convenient operation of the insurer's insurance business or to the administration of any of its investments. All of the insurer's investments under this section shall not at any time exceed 10% of the investing insurer's assets. For the purposes of this section, a "subsidiary" is a corporation of which the insurer owns a majority of the outstanding shares of all voting stock.

History: En. Sec. 115, Ch. 286, L. 1959; R.C.M. 1947, 40-3118; amd. Sec. 3, Ch. 570, L. 1979.

Cross-References

Ownership of own stock — not asset, 33-2-502.

Reserves — domestic life insurers — valuation of stock, 33-2-533.

33-2-823. Equipment trust certificates. An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment.

History: En. Sec. 116, Ch. 286, L. 1959; R.C.M. 1947, 40-3119.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-824. Investment trust securities. An insurer may invest in the securities of any management type investment company or investment trust registered with the federal securities and exchange commission under the Investment Company Act of 1940, as from time to time amended, if such investment company or trust has assets not less than $50 million as at date of investment by the insurer.

History: En. Sec. 117, Ch. 186, L. 1959; R.C.M. 1947, 40-3120.

Cross-References

Reserves — domestic life insurers — valuation of securities, 33-2-533.

33-2-825. Policy loans. A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

History: **En. Sec. 118, Ch. 286, L. 1959; R.C.M. 1947, 40-3121.**

33-2-826. Collateral loans. An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this part. As at date made, no such loan shall exceed in amount 75% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this part to be invested in the respective categories of securities so pledged.

History: **En. Sec. 119, Ch. 286, L. 1959; R.C.M. 1947, 40-3122.**

33-2-827. Savings and loan. To the extent that such an account is insured by the federal savings and loan insurance corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations.

History: **En. Sec. 120, Ch. 286, L. 1959; R.C.M. 1947, 40-3123.**

33-2-828. Foreign securities. An insurer authorized to transact insurance in a foreign country may make investments, in aggregate amount not exceeding its deposit and obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to like investments required pursuant to this part for investments in the United States of America. Canadian securities eligible for investment under other provisions of this part are not subject to this section.

History: **En. Sec. 121, Ch. 286, L. 1959; R.C.M. 1947, 40-3124.**

Cross-References

Reserves — valuation of securities, 33-2-533.

33-2-829. Miscellaneous investments. (1) An insurer may make loans or investments not otherwise expressly permitted under this part, in aggregate amount not over 5% of the insurer's assets and not over 1% of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of 33-2-803 and otherwise qualifies as a sound investment. But no such loan or investment shall be represented by:

(a) any item described in 33-2-502 or any loan or investment otherwise expressly prohibited;

(b) agents' balances or amounts advanced to or owing by agents or former agents of the insurer, whether or not secured, except as to policy loans, mortgage loans, and collateral loans otherwise authorized under this part;

(c) any category of loans or investments eligible under any other provisions of this part;

(d) any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this part.

(2) The insurer shall keep a separate record of all loans and investments made under this section.

History: **En. Sec. 122, Ch. 286, L. 1959; R.C.M. 1947, 40-3125.**

33-2-830. Real estate mortgages. (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real estate" means all farm lands used for tillage, crop, pasture, or timberlands and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(i) 80% of the value of the real property or leasehold securing the same, provided, however, if said real property or leasehold consists of one- or two-family residential property, 90% of said value;

(ii) the amount of any insurance or guaranty of such loan by the United States of America or by any agency or instrumentality thereof; or

(iii) the amounts provided in subsection (i) herein, plus the amount by which the excess of such loan over such amount is insured or guaranteed by the United States of America or by any agency or instrumentality thereof.

(b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(4) No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

(5) No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer or unless the insurer holds a senior participation in such mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding 35 years.

History: En. Sec. 123, Ch. 286, L. 1959; amd. Sec. 1, Ch. 20, L. 1961; R.C.M. 1947, 40-3126; amd. Sec. 4, Ch. 570, L. 1979.

Cross-References

Personalty acquired through foreclosure — domestic life insurers — applicability as asset, 33-2-502.

Personalty acquired through foreclosure — domestic life insurers — valuation, 33-2-534.

Purchase money mortgages — domestic life insurers — valuation, 33-2-535.

Real estate mortgages — general provisions, Title 71, ch. 1, part 1.

33-2-831. Chattel mortgages. (1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to 33-2-830, an insurer may lend or invest an amount not exceeding 20% of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than 5 years and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses, motels, and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this part.

History: En. Sec. 124, Ch. 286, L. 1959; R.C.M. 1947, 40-3127.

Cross-References

Security in personalty — general provisions, Title 30, ch. 9.

Personalty acquired through foreclosure — applicability as asset, 33-2-502.

Personalty acquired through foreclosure — valuation, 33-2-534.

33-2-832. Real estate. An insurer may invest in real estate only if used for the purposes or acquired in the manners and within the limits as follows:

(1) the land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the commissioner, all such investments shall not aggregate more than 5% of the insurer's assets.

(2) real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of its business;

(3) real estate acquired in part payment of the consideration on the sale of other real estate owned by it if such transaction does not increase the insurer's investment in real estate;

(4) real estate acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this code;

(5) the seller's interest in real property subject to an agreement of purchase or sale. The sum invested in any such parcel of real estate shall not exceed 90% of the market value of such parcel provided the same consists of one- or two-family residential property and 80% of the market value of all other such parcels of real estate.

(6) real estate or any interest therein acquired or held by purchase, lease, or otherwise, other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, or club purposes, acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not, except with the commissioner's consent, have at any one time invested in real estate under this subsection an amount exceeding 5% of its assets.

(7) additional real estate and equipment incident to real estate if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subsections (2), (3), (4), or (6) of this section. Such real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits and shall be subject to disposal at the same time and under the same conditions as applying to such enhanced real estate under 33-2-841.

(8) except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subsection (5), shall not at any one time exceed 10% of the insurer's assets.

History: En. Sec. 125, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1961; R.C.M. 1947, 40-3128; amd. Sec. 5, Ch. 570, L. 1979.

Cross-References

Reserve asset — transferability required, 33-2-531.

Real estate — domestic life insurers — valuation, 33-2-534.

33-2-833. Obligations of federal housing administrator and national mortgage associations. Notwithstanding other provisions of the law, it is lawful for any insurance company operating under the laws of this state to invest the funds in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part); amd. Sec. 11, Ch. 198, L. 1979.

Cross-References

Reserves — domestic life insurers — valuation of bonds, 33-2-532.

33-2-834 through 33-2-840 reserved.

33-2-841. Time limit for disposal of real estate — extension. (1) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under 33-2-832(1) within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

(2) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under subsections (2), (3), and (4) of 33-2-832 within 5 years after the date of acquisition.

(3) Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate unless the insurer elects to hold such real estate as an investment for income purposes under 33-2-832(6), in which event thereafter such real estate shall be deemed to have been acquired at a cost equal to its book value at the time of such election and to be held under and subject to the provisions of such subsection (6).

History: En. Sec. 126, Ch. 286, L. 1959; R.C.M. 1947, 40-3129.

33-2-842. Time limit for disposal of other ineligible property and securities — extension. (1) Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility, except that any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 3, 33-2-1211, or 33-2-1212.

(2) Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

History: En. Sec. 127, Ch. 286, L. 1959; R.C.M. 1947, 40-3130.

33-2-843. Failure to dispose of real estate, personal property, or securities — effect — penalty. (1) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner, as provided in 33-2-841 or 33-2-842, shall not be allowed as an asset of the insurer.

(2) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner may, in his discretion, suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by his order, specify.

History: En. Sec. 128, Ch. 286, L. 1959; R.C.M. 1947, 40-3131.

33-2-844 through 33-2-850 reserved.

33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its title plant, as defined in 33-25-105, and equipment and, with the commissioner's consent, in stock of abstract companies and of title agents as defined in 33-25-105.

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost.

History: En. Sec. 129, Ch. 286, L. 1959; R.C.M. 1947, 40-3132; amd. Sec. 17, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: In (1), in first sentence, near middle, substituted "title plant, as defined in 33-25-105" for "abstract plant", at end of first sentence, inserted "and of title agents as defined in 33-25-105", and deleted second sentence that read: "If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than $100,000"; and in (3) substituted "title plant" for "abstract plant".

Cross-References

Assets allowed, 33-2-501.

33-2-852. Investments of foreign insurers. The investment portfolio of a foreign insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as that required under this part for similar funds of like domestic insurers. For the purposes of this provision, the domicile of an alien insurer, other than a life insurer formed under the laws of Canada, shall be deemed to be that state in which it maintains its principal deposit.

History: En. Sec. 131, Ch. 286, L. 1959; R.C.M. 1947, 40-3134.

Part 9

Rehabilitation and Liquidation (Repealed. Sec. 61, Ch. 383, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-901 through 33-2-947. En. Sec. 566 thru 596, Ch. 286, L. 1959; R.C.M. 1947, 40-5101 thru 40-5133.

33-2-948. En. 40-5134 by Sec. 2, Ch. 200, L. 1977; R.C.M. 1947, 40-5134.

Part 10

Stock Transfers — Holding Companies (Repealed. Sec. 1, Ch. 239, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-1001 through 33-2-1007. En. Sec. 2 through 8, Ch. 269, L. 1967; R.C.M. 1947, 40-5502(part), 40-5503 thru 40-5508.

Part 11

Affiliation and Merger — Holding Company Systems

33-2-1101. Definitions. As used in this part, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) An "affiliate" of or person "affiliated" with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" shall have the same meaning as set forth in 33-1-201, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall not include any securities broker performing no more than the usual and customary broker's function.

(6) A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(8) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971; R.C.M. 1947, 40-5509(part).

33-2-1102. Authorization of subsidiaries. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) rendering other services related to the operations of an insurance business, including but not limited to actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) ownership and management of assets which the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, agents, and other forms of consumer financing;

(11) any other business activity determined by the commissioner to be reasonable ancillary to an insurance business;

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(a).

33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 5% of such insurer's assets or 50% of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer shall include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(e) invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this part applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this part and the insurer has notified the commissioner thereof.

History: **En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(b) thru (e); amd. Sec. 12, Ch. 198, L. 1979; amd. Sec. 142, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), substituted "this part" for "all other sections of parts 10 and 11 of this chapter"; in (2) and (4), substituted "this part" for "parts 10 and 11 of this chapter".

33-2-1104. Acquisition of control of or merger with domestic insurer — filing requisites. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"):

(i) if such person is an individual, his principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subsection (i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence) and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) a description of any recommendations to purchase any security referred to in subsection (1) made during the 12 calendar months preceding the filing of the statement, by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(3) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (2) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by subsection (2) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(5) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(a) thru (c).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

Securities Act of Montana, Title 30, ch. 10.

33-2-1105. Approval by commissioner — hearings — notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing thereon, he finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) shall be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days notice thereof shall be given by the commissioner to the person filing the statement. Not less than 7 days' notice of such public hearing shall be given

by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to subsections (1) through (4) of 33-2-1104 and all notices of public hearings held pursuant to subsection (1) shall be mailed by the insurer to its shareholders within 5 business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(d), (e).

Cross-References

Administrative hearings, Title 2, ch. 4, part 6.

Discovery — District Court proceedings, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

33-2-1106. Exemptions — violations — jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section shall not apply to:

(a) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection (1) of 33-2-1104 of any voting security referred to in subsection (1) of 33-2-1104 which, immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding:

(b) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

(i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(ii) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following shall be violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving such person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person shall be deemed to have performed acts

equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: **En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(f) thru (h).**

Cross-References

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1107 through 33-2-1110 reserved.

33-2-1111. Registration of insurers — requisites — termination. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 60 days after July 1, 1971, or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(d) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) No information need be disclosed on the registration statement filed pursuant to subsection (2) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving ½ of 1% or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition; provided, however, that subject to 33-2-1114, each registered insurer shall so report all dividends and other distributions to shareholders within 2 business days following the declaration thereof.

(5) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(7) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(a) thru (g).

33-2-1112. Exemptions — disclaimer — violations. (1) The provisions of 33-2-1111 and this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of 33-2-1111 and this section.

(2) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(3) The failure to file a registration statement or any amendment thereto required by 33-2-1111 and this section within the time specified for such filing shall be a violation of 33-2-1111 and this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(h) thru (j).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1113. Transactions with affiliates — standards. (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(a) The terms shall be fair and reasonable.

(b) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(c) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

History: **En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(a), (b).**

33-2-1114. Dividends and other distributions — commissioner approval. (1) No insurer subject to registration under 33-2-1111 and 33-2-1112 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or the commissioner shall have approved such payment within such 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of such insurer's surplus as regards policyholders as of December 31 next preceding or the net

gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the 30-day period referred to above.

History: **En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(c).**

33-2-1115. Examination. (1) Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under 33-2-1111 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) shall be liable for and shall pay the expense of such examination.

History: **En. Sec. 6, Ch. 64, L. 1971; R.C.M. 1947, 40-5514.**

33-2-1116. Confidentiality of information. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: **En. Sec. 7, Ch. 64, L. 1971; R.C.M. 1947, 40-5515.**

Cross-References

Records open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1117. Rules. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this part.

History: En. Sec. 8, Ch. 64, L. 1971; R.C.M. 1947, 40-5516.

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1118. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this part or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this part or any such rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(a).

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1119. Voting of securities — prohibition — injunction — sequestration. (1) No security which is the subject of any agreement or arrangement regarding acquisition or which is acquired or to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(2) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the district court for Lewis and Clark County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of 33-2-1113 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part or any rule or order issued by the commissioner hereunder, the district court for Lewis and Clark County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this part. Notwithstanding any other provisions of law, for the purposes of this part the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(b), (c).

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1120. Criminal proceedings — penalty. (1) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or agent thereof.

(2) Any insurer which willfully violates this part may be fined not more than $5,000.

(3) Any individual who willfully violates this part may be fined not more than $500 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both.

History: En. Sec. 10, Ch. 64, L. 1971; R.C.M. 1947, 40-5518.

Cross-References

Criminal Procedure, Title 46.

33-2-1121. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this part which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971; R.C.M. 1947, 40-5519.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971; R.C.M. 1947, 40-5520.

Cross-References

Contested administrative cases, 2-4-102; Title 2, ch. 4, part 6.

Licenses — withdrawal or revocation, 2-4-631.

33-2-1123. Judicial review — mandamus. (1) Any person aggrieved by any act, determination, rule, or order or any other action of the commissioner pursuant to this part may appeal therefrom to the district court for Lewis and Clark County. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part may petition the district court for Lewis and Clark County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971; R.C.M. 1947, 40-5521.

Cross-References

Mandamus, Title 27, ch. 26.

Appeals from Commissioner, 33-1-711.

33-2-1124. Conflict with other laws. All laws and parts of laws of this state inconsistent with this part are hereby superseded with respect to matters covered by this part.

History: En. Sec. 14, Ch. 64, L. 1971; R.C.M. 1947, 40-5522.

Part 12

Limit of Risk — Reinsurance

33-2-1201. Limit of risk. (1) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) Reinsurance ceded as authorized by 33-2-1205 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of

the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law and shall be determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section shall not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, sprinklered risks, or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

History: **En. Sec. 80, Ch. 286, L. 1959; R.C.M. 1947, 40-2909.**

33-2-1202 through 33-2-1204 reserved.

33-2-1205. Reinsurance — limitations — credit as asset. (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) An insurer may reinsure all or part of any particular risk with any solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(3) No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance and is either authorized to transact insurance in at least one state of the United States or has an attorney-in-fact resident in the United States upon whom service of legal process may be made.

(4) Credit shall be allowed as an asset or as a deduction from liability to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under the foregoing provisions of this section, except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(5) Upon request of the commissioner, an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(6) This section shall not apply to wet marine and transportation insurance.

History: **En. Sec. 81, Ch. 286, L. 1959; R.C.M. 1947, 40-2910.**

33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing. The commissioner may in his discretion hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after filing the proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

History: En. 40-2911 by Sec. 1, Ch. 303, L. 1977; R.C.M. 1947, 40-2911; amd. Sec. 4, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: In (1) at end of first sentence, deleted "after a hearing thereon" after "writing" and inserted remainder of (1) and (1)(a) through (1)(c); and in (2) inserted "or disapprove" after "approve" and after "after" substituted remainder of subsection for "such a hearing unless he finds that it would substantially reduce the protection or service to the policyholders".

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1207. Interest in reinsurance. The original insured has no interest in a contract of reinsurance.

History: En. Sec. 280, Ch. 286, L. 1959; R.C.M. 1947, 40-3723.

33-2-1208 through 33-2-1210 reserved.

33-2-1211. Bulk reinsurance — stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of bulk reinsurance, but no such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he shall so notify the insurer in writing specifying his reasons therefor.

History: En. Sec. 464, Ch. 286, L. 1959; R.C.M. 1947, 40-4747.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1212. Bulk reinsurance — mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer, pursuant to 33-3-216, of his equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

History: **En. Sec. 465, Ch. 286, L. 1959; R.C.M. 1947, 40-4748.**

Cross-References

Appeals from Commissioner's decision, 33-1-711.

Part 13

Supervision, Rehabilitation, and Liquidation

Part Cross-References

Notice to Attorney General — court action by state agency, 25-1-501.

33-2-1301. Short title. This part shall be cited as the "Insurers Supervision, Rehabilitation, and Liquidation Act".

History: **En. Sec. 1, Ch. 383, L. 1979.**

33-2-1302. Construction and purpose. (1) This part may not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(2) This part shall be liberally construed to effect the purpose stated in subsection (3).

(3) The purpose of this part is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(b) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(c) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(d) equitable apportionment of any unavoidable loss;

(e) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

History: En. Sec. 1, Ch. 383, L. 1979.

33-2-1303. Definitions. For the purposes of this part the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under 33-2-1321 or 33-2-1322. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this state;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) operating under a license or certificate of authority, as an insurer, issued by the commissioner.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(a) when in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all

policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Montana insurance guaranty association, the workers' compensation security fund, the Montana life and health insurance guaranty association, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

(i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within 30 days after it becomes payable; or

(ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(A) any capital and surplus required by law for its organization; or

(B) the total par or stated value of its authorized and issued capital stock;

(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

(b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute or by the commissioner upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect 33-2-1342(1), 33-2-1381, 33-2-1382, and 33-2-1384 through 33-2-1386 are in force and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States.

(19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with property or with an interest therein or with

the possession thereof or fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.

History: En. Sec. 2, Ch. 383, L. 1979.

Cross-References

Assets and liabilities — reserves, Title 33, ch. 2, part 5.

Montana Insurance Guaranty Association, Title 33, ch. 10, part 1.

Montana Life and Health Insurance Guaranty Association Act, Title 33, ch. 10, part 2.

Workers' compensation security fund, 39-71-2206.

33-2-1304. To whom proceedings may be applied. The proceedings authorized by this part may be applied to:

(1) all insurers who are doing or have done insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) all nonprofit service plans and all fraternal benefit societies and beneficial societies; or

(6) all title insurance companies.

History: En. Sec. 3, Ch. 383, L. 1979.

33-2-1305. Who may bring action — procedure exclusive. (1) No delinquency proceeding may be commenced under this part by anyone other than the commissioner, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this part.

History: En. Sec. 4, Ch. 383, L. 1979.

33-2-1306. Personal jurisdiction. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Montana Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(1) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker in any action on or incident to the obligation;

(2) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced or is an agent or broker of or for the reinsurer in any action on or incident to the reinsurance contract; or

(3) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

History: **En. Sec. 4, Ch. 383, L. 1979.**

Cross-References

Service on corporations and foreign corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1307. Stay pending out-of-state proceedings. If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

History: **En. Sec. 4, Ch. 383, L. 1979.**

33-2-1308. Venue. All actions herein authorized shall be brought in the district court in the county in which the office of the commissioner is located.

History: **En. Sec. 4, Ch. 383, L. 1979.**

Cross-References

Office of Commissioner — Lewis and Clark County, Art. III, sec. 2, Mont. Const.; Art. VI, sec. 1, Mont. Const.; 2-15-1902.

33-2-1309. Injunctions and orders. (1) Any receiver appointed in a proceeding under this part may at any time apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with a proceeding under this part;

(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(h) the levying of execution against the insurer, its assets, or its policyholders;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under this part.

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1).

History: **En. Sec. 5, Ch. 383, L. 1979.**

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1310. Cooperation of officers, owners, and employees. (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" includes but is not limited to the following:

(a) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.

(2) No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

(4) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the commissioner issued validly under this part may:

(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner.

History: En. Sec. 6, Ch. 383, L. 1979.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

Misdemeanor, 45-2-101.

33-2-1311. Bonds of commissioner and his deputies. In any proceeding under this part, the commissioner and his deputies are responsible on their official bonds for the faithful performance of their duties. If the court finds it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of administration.

History: En. Sec. 7, Ch. 383, L. 1979.

Cross-References

Official bonds — state officers, Title 2, ch. 9, part 6.

33-2-1312 through 33-2-1320 reserved.

33-2-1321. Commissioner's summary orders and supervision proceedings. (1) Whenever the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under this part, he may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct or eliminate such conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the commissioner shall notify the insurer of his determination and furnish to the insurer a written list of the commissioner's requirements to abate his determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), he shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

(a) dispose of, convey, or encumber any of its assets or its business in force;

(b) withdraw from any of its bank accounts;

(c) lend any of its funds;

(d) invest any of its funds;

(e) incur any debt, obligation, or liability;

(f) merge or consolidate with another company; or

(g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under 33-2-1331 or 33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the commissioner would base his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him was then still in effect, he is subject to a civil penalty imposed by the district court not to exceed $10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of this part, including any person described in 33-2-1310(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, said person is personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs.

History: En. Sec. 9, Ch. 383, L. 1979.

Cross-References

Hearings and meetings of public agencies open to public, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

Notice of hearing — administrative proceeding, 2-3-104, 2-4-601.

Injunctions, Title 27, ch. 19.

33-2-1322. Court's seizure order. (1) The commissioner may file in a district court of this state a petition alleging, with respect to a domestic insurer:

(a) that there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this part;

(b) that the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) the contents of an order considered necessary by the commissioner.

(2) Upon a filing under subsection (1), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its

own motion, the court may from time to time hold such hearings as it considers desirable after such notice as it considers appropriate and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this part after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this part shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

History: En. Sec. 10, Ch. 383, L. 1979.

Cross-References

Initiation of actions, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance therewith, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him in a confidential file.

History: En. Sec. 11, Ch. 383, L. 1979.

Cross-References

Deliberations of state agencies open to public, Art. II, sec. 9, Mont. Const.; 2-3-203.

Records of state agencies available for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1324 through 33-2-1330 reserved.

33-2-1331. Grounds for rehabilitation. The commissioner may apply by petition to a district court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets,

forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and his influence on management.

(6) After demand by the commissioner under 33-1-403 or under this part, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this part.

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under 33-2-1321.

(10) The insurer has failed to pay within 60 days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this part.

History: **En. Sec. 12, Ch. 383, L. 1979.**

Cross-References

Suspension or revocation of certificate of authority — special grounds, 33-2-119.

33-2-1332. Rehabilitation orders. (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or clerk and recorder of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the county clerk and recorder would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order.

(3) Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer.

History: **En. Sec. 13, Ch. 383, L. 1979.**

33-2-1333. Powers and duties of the rehabilitator. (1) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of his office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(2) The rehabilitator may take such action as necessary to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under 33-2-1351 and 33-2-1352 to avoid fraudulent transfers.

History: **En. Sec. 14, Ch. 383, L. 1979.**

33-2-1334. Effect of proceedings on pending and potential litigation. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

History: **En. Sec. 15, Ch. 383, L. 1979.**

Cross-References

Statutes of Limitation, Title 27, ch. 2.

33-2-1335. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

History: **En. Sec. 15, Ch. 383, L. 1979.**

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1336. Termination of rehabilitation. (1) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under 33-2-1341. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under 33-2-1331 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

History: En. Sec. 16, Ch. 383, L. 1979.

33-2-1337 through 33-2-1340 reserved.

33-2-1341. Grounds for liquidation. The commissioner may petition the district court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) of any ground for an order of rehabilitation as specified in 33-2-1331, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) that the insurer is insolvent; or

(3) that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

History: En. Sec. 17, Ch. 383, L. 1979.

33-2-1342. Liquidation orders. (1) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the clerk and recorder of the county in which its principal office or place of business is located or, in the case of real estate, with the clerk and recorder of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of

entry of the order of liquidation, except as provided in 33-2-1343 and 33-2-1366.

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(4) At the time of petitioning for an order of liquidation or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section shall require accounting to the court by the liquidator. Accountings shall be at such intervals as the court specifies in its order.

History: En. Sec. 18, Ch. 383, L. 1979.

33-2-1343. Continuance of policy coverage. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) a period of 30 days from the date of entry of the liquidation orders;

(b) the expiration of the policy coverage;

(c) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(d) the liquidator has effected a transfer of the policy obligation pursuant to 33-2-1345(1)(h).

(2) An order of liquidation under 33-2-1342 terminates coverages at the time specified in subsection (1) for purposes of any other statute.

(3) Policies of life or health insurance or annuities continue in force for such period and under such terms as provided by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2).

History: En. Sec. 19, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1344. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

History: En. Sec. 20, Ch. 383, L. 1979.

33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for him under this part and determine his reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) employ agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing and in connection therewith require the production of any books, papers, records, or other documents which he considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts;

(ii) do such other acts as are necessary to collect, conserve, or protect its assets or property, including selling, compounding, compromising, or assigning debts for collection purposes on such terms and conditions as he considers best; and

(iii) pursue any creditor's remedies available to enforce his claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into such contracts as are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated or otherwise provided for as may be necessary for the accomplishment of or in aid of the purpose of liquidation.

History: En. Sec. 21, Ch. 383, L. 1979; amd. Sec. 143, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (1)(f)(ii), substituted "including . . . purposes on" for "and has the power to sell, compound, compromise, or assign debts for purposes of collection upon".

Cross-References

Intervention in proceedings, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Statutes of Limitation, Title 27, ch. 2.

Receivers — general provisions, Title 27, ch. 20, part 1.

Statute of Frauds, 28-2-903.

Usury, 31-1-107, 31-1-108.

Guaranty associations, Title 33, ch. 10.

33-2-1346. Notice to creditors and others. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(b) by first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) by first-class mail to all insurance agents of the insurer;

(d) by first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last-known address as indicated by the records of the insurer; and

(e) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) shall require claimants to file with the liquidator their claims together with proper proofs thereof under 33-2-1365, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) If notice is given in accordance with this section, the distribution of assets of the insurer under this part shall be conclusive with respect to all claimants, whether or not they received notice.

History: En. Sec. 22, Ch. 383, L. 1979.

33-2-1347. Duty of agents to give notice. (1) Every person who receives notice in the form prescribed in 33-2-1346 that an insurer which he represents as an agent is the subject of a liquidation order shall within 15 days of such notice give notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the agent's records to each policyholder or other person named in any policy issued through the agent by the insurer if he has a record of the address of the policyholder or other person. A policy shall be considered issued through an agent if the agent has a property interest in the expiration of the policy or if the agent has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired, and the nature of the impairment, including termination of coverage as described in 33-2-1343. Notice by a general agent satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any agent failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000 and may have his license suspended, after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate.

History: En. Sec. 23, Ch. 383, L. 1979.

Cross-References

Licenses — administrative proceedings, 2-4-631.

Hearings by Commissioner, 33-1-701.

Agent's license — suspension, Title 33, ch. 17, part 10.

33-2-1348. Effect of proceedings on pending and potential litigation — actions by liquidator. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity may be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or such time in addition to 2 years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

History: En. Sec. 24, Ch. 383, L. 1979.

Cross-References

Statutes of Limitation, Title 27, ch. 2.

33-2-1349. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

History: **En. Sec. 24, Ch. 383, L. 1979.**

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1350. Collection and listing of assets. (1) As soon as practicable after the liquidation order but not later than 120 days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court, and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with 33-2-1363 fulfills the requirements of subsection (1) of this section.

History: **En. Sec. 25, Ch. 383, L. 1979.**

33-2-1351. Fraudulent transfers prior to petition. (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this part is fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this part which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor, or obligee.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under 33-2-1353(3).

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer is considered fraudulent and may be avoided by the receiver under subsection (1) if:

(a) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

History: En. Sec. 26, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

33-2-1352. Fraudulent transfer after petition. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Nothing in this part impairs the negotiability of currency or negotiable instruments.

History: En. Sec. 27, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Effect of recordation — real property, 70-21-302.

33-2-1353. Voidable preferences and liens. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this part, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be considered preferences if made or suffered within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not he held such position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the meaning of subsection (2), if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

History: En. Sec. 28, Ch. 383, L. 1979.

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Crop liens — preferences and priorities, Title 71, ch. 3, part 7.

33-2-1354. Procedure for voiding preferences and liens. (1) The district court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under 33-2-1353 through 33-2-1357. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien and, if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(2) The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (1), to the extent of the amount paid to the liquidator.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1355. Set off for further credit given in good faith. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1356. Transactions to pay for attorneys' services. If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this part or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court and the excess may be recovered by the liquidator for the benefit of the estate, provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney at law for services rendered or to be rendered shall be governed by the provision of 33-2-1353(1)(b)(iv).

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1357. Personal liability. (1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under 33-2-1353(1) is personally liable therefor and is bound to account to the liquidator.

(3) Nothing in this section prejudices any other claim by the liquidator against any person.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1358. Claims of holders of void or voidable rights. (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 33-2-1364 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1).

History: En. Sec. 29, Ch. 383, L. 1979.

33-2-1359. Setoffs and counterclaims. (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this part shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) and 33-2-1362.

(2) No setoff or counterclaim may be allowed in favor of any person when:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer or is to pay a balance upon a subscription to the capital stock of the insurer or is in any other way in the nature of a capital contribution; or

(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.

History: En. Sec. 30, Ch. 383, L. 1979.

33-2-1360. Assessments against members of insurer. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under 33-2-1342 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities;

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided in subsection (1), including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to his last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him, pursuant to subsection (3), together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on or before such return day the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means.

History: **En. Sec. 31, Ch. 383, L. 1979.**

33-2-1361. Reinsurer's liability. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor may not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

History: **En. Sec. 32, Ch. 383, L. 1979.**

33-2-1362. Recovery of premiums owed. (1) (a) An agent or any other person responsible for the payment of a premium, other than the insured, shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both may not be allowed to an agent for any amounts advanced to the insurer by the agent on behalf of but in the absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend or revoke or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than $1,000 for each act in violation of this section by such party.

(3) Before the commissioner may take any action as set forth in subsection (2), he shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, when a hearing on the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner, if he finds a violation, shall impose such penalties under subsection (2) as he considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court.

History: En. Sec. 33, Ch. 383, L. 1979.

Cross-References

Licensure — administrative proceedings, 2-4-631.

Hearing before Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

Suspension or revocation of agent's license, Title 33, ch. 17, part 10.

33-2-1363. Domiciliary liquidator's proposal to distribute assets. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, classes 1 and 2;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in 33-2-1371 in accordance with such priorities (no bond may be required of any such association); and

(e) a full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(5) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsections (2)(a) and (2)(b).

History: En. Sec. 34, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1364. Filing of claims. (1) Proof of all claims shall be filed with the liquidator in the form required by 33-2-1365 on or before the last day for filing specified in the notice required under 33-2-1346, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant, and his claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under 33-2-1351 through 33-2-1357 or was voluntarily surrendered under 33-2-1358, and the filing satisfies the conditions of 33-2-1358; and

(c) the valuation under 33-2-1370 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

History: En. Sec. 35, Ch. 383, L. 1979.

33-2-1365. Proof of claim. (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(a) the particulars of the claim, including the consideration given for it;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimants;

(f) a copy of the written instrument which is the foundation of the claim;

(g) the name and address of the claimant and the attorney who represents him, if any.

(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

History: En. Sec. 36, Ch. 383, L. 1979.

33-2-1366. Special claims. (1) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with 33-2-1364. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under 33-2-1332 or 33-2-1342.

History: En. Sec. 37, Ch. 383, L. 1979.

Cross-References

Legal rate of interest, 31-1-106.

33-2-1367. Claims of insureds or claimants against insureds. (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by 33-2-1346, whichever is later, he is an unexcused late filer.

(3) The liquidator shall make his recommendations to the court under 33-2-1371 for the allowance of an insured's claim under subsection (2), after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

History: En. Sec. 38, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1368. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his attorney and to any other persons directly affected not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

History: En. Sec. 39, Ch. 383, L. 1979.

33-2-1369. Claims of sureties. (1) Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person.

(2) The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

History: En. Sec. 40, Ch. 383, L. 1979.

33-2-1370. Claims of secured creditors. (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(a) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured.

History: En. Sec. 41, Ch. 383, L. 1979.

33-2-1371. Priority of distribution. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be as follows:

(1) Class 1—the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable attorney's fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2—debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class 3—all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance or as gratuities. No payment by an employer to his employee may be treated as a gratuity.

(4) Class 4—claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(5) Class 5—claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8).

(6) Class 6—claims filed late or any other claims other than claims under subsections (7) and (8).

(7) Class 7—surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(8) Class 8—the claims of shareholders or other owners.

History: En. Sec. 42, Ch. 383, L. 1979.

33-2-1372. Liquidator's recommendations to the court concerning claims. (1) The liquidator shall review all claims duly filed in the liquidation and make such further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under 33-2-1368. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to 33-2-1368. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

History: En. Sec. 43, Ch. 383, L. 1979.

33-2-1373. Distribution of assets. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

History: En. Sec. 44, Ch. 383, L. 1979.

33-2-1374. Unclaimed and withheld funds. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest except in accordance with 33-2-1371 to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within 6 years from the discharge of the liquidator shall be considered to have been abandoned and shall be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under 33-2-1366 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with 33-2-1371. Any sums remaining which under 33-2-1371 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) unless the commissioner in his discretion petitions the court to reopen the liquidation under 33-2-1376.

History: En. Sec. 45, Ch. 383, L. 1979.

Cross-References

Escheated property — claims, Title 72, ch. 14.

33-2-1375. Termination of liquidation proceedings. (1) When all assets justifying the expense of collection and distribution have been collected and distributed under this part, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

History: En. Sec. 46, Ch. 383, L. 1979.

33-2-1376. Reopening liquidation. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

History: En. Sec. 47, Ch. 383, L. 1979.

33-2-1377. Disposition of records during and after liquidation. When it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

History: En. Sec. 48, Ch. 383, L. 1979.

Cross-References

Public records management, Title 2, ch. 6, part 2.

33-2-1378. Audit of the receiver's books. The district court may, as it considers desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this part, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

History: En. Sec. 49, Ch. 383, L. 1979.

33-2-1379. Conservation of property of foreign or alien insurers. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in 33-2-1331;

(b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;

(c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;

(e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under 33-2-1380 to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under 33-2-1382 to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied, all costs shall be assessed against such party.

History: **En. Sec. 50, Ch. 383, L. 1979.**

33-2-1380. Liquidation of assets of foreign or alien insurers. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) any of the grounds in 33-2-1331 or 33-2-1341; or

(b) any of the grounds specified in subsections (1)(b) through (1)(d) of 33-2-1379.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond thereto as reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under 33-2-1382. If a domiciliary

liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under 33-2-1382.

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under this part as are otherwise compatible with the provisions of this section.

History: **En. Sec. 51, Ch. 383, L. 1979.**

33-2-1381. Domiciliary liquidators in other states. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under 33-2-1382(3), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. He also has the right to recover all other assets of the insurer located in this state, subject to 33-2-1382.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under 33-2-1379 or 33-2-1380 or for an ancillary receivership under 33-2-1382 or, after approval by the district court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

History: **En. Sec. 52, Ch. 383, L. 1979.**

33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the county clerk and recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state.

History: En. Sec. 53, Ch. 383, L. 1979; amd. Sec. 144, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "county clerk and recorder" for "recorder of deeds in this state" in (2); deleted "with that recorder of deeds" at the end of (2).

Cross-References

Recorder of deeds — County Clerk and Recorder, 7-4-2619, 70-21-201.

33-2-1383. Ancillary summary proceedings. The commissioner in his sole discretion may institute proceedings under 33-2-1321 through 33-2-1323 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

History: En. Sec. 54, Ch. 383, L. 1979.

33-2-1384. Claims of nonresidents against insurers domiciled in this state. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this part or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in 33-2-1385(2) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as to amount and as to priority against

special deposits or other security located in such ancillary states but is not conclusive with respect to priorities against general assets under 33-2-1371.

History: **En. Sec. 55, Ch. 383, L. 1979.**

33-2-1385. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in 33-2-1364 and 33-2-1365. The ancillary receiver shall make his recommendation to the court as under 33-2-1372. He shall also arrange a date for hearing if necessary under 33-2-1368 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

History: **En. Sec. 56, Ch. 383, L. 1979.**

33-2-1386. Exemption from legal process during pendency of liquidation. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution may be commenced or maintained in this state against the delinquent insurer or its assets.

History: **En. Sec. 57, Ch. 383, L. 1979.**

33-2-1387. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general

creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with 33-2-1370, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

History: **En. Sec. 58, Ch. 383, L. 1979.**

33-2-1388. Subordination of claims for noncooperation of ancillary receiver. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under 33-2-1371(7).

History: **En. Sec. 59, Ch. 383, L. 1979.**

CHAPTER 3

DOMESTIC STOCK AND MUTUAL INSURERS

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Part 1

General Provisions

33-3-101. Scope of chapter. This chapter shall apply only to domestic stock insurers and domestic mutual insurers transacting or proposing to transact insurance on the cash premium or legal reserve plan, except that 33-3-414(2) and 33-3-503 shall also apply to foreign and alien insurers.

History: En. Sec. 418, Ch. 286, L. 1959; R.C.M. 1947, 40-4701.

33-3-102. Definitions. (1) A domestic stock insurer is an incorporated insurer with capital divided into shares and owned by its stockholders.

(2) A domestic mutual insurer is an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.

History: **En. Secs. 419, 420, Ch. 286, L. 1959; R.C.M. 1947, 40-4702, 40-4703.**

33-3-103. Applicability of general corporation statutes. The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

History: **En. Sec. 421, Ch. 286, L. 1959; R.C.M. 1947, 40-4704.**

Cross-References

Business corporations, Title 35, ch. 1; 35-1-103.

33-3-104. Extinguishment of unused corporate charters. (1) The corporate charter of any corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of 36 consecutive months after January 1, 1961, is not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under law currently in force, is automatically hereby extinguished and nullified at the expiration of such 36-month period.

(2) The period during which any such corporation referred to in subsection (1) above is the subject of delinquency proceedings under part 13, chapter 2, of this title shall not be counted as part of any such 36-month period.

History: **En. Sec. 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4750(2), (3); amd. Sec. 141, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (2).

Cross-References

Certificate of authority, 33-2-101.

Part 2

Formation

33-3-201. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) the name of the corporation. If a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be stated in the articles of incorporation but shall not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973; R.C.M. 1947, 40-4705.

Cross-References

Acknowledgment of deeds, Title 1, ch. 5, parts 1 through 3.

Types of insurance — definitions, 33-1-205 through 33-1-212.

Voting requirements — general provisions, 35-1-505.

33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the commissioner together with the filing fees therefor specified in 33-2-708. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, he shall endorse his approval upon each set of the articles, except that if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under

33-2-112, he shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators together with a written statement of the reasons for such refusal. If approved by him, the commissioner shall then forward the articles of incorporation, with his approval endorsed thereon, to the incorporators. The incorporators shall forthwith file one set of the articles of incorporation with the secretary of state, one set with the commissioner, bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is to be located the corporation's principal place of business; and the remaining set of articles shall be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, he shall refuse to approve the same and shall return all sets of the proposed articles of incorporation to the proposed incorporators together with a written statement of the reasons for his refusal to approve.

(3) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings referred to in subsection (1) above, but it shall not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(4) A copy of the certificate of incorporation, duly certified by the secretary of state, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

History: **En. Sec. 423, Ch. 286, L. 1959; R.C.M. 1947, 40-4706; amd. Sec. 1, Ch. 373, L. 1983.**

Compiler's Comments

1983 Amendment: Transferred duties of the attorney general to the state commissioner of insurance by the following: in second sentence of (1), substituted "The commissioner shall examine the proposed articles of incorporation" for "The commissioner shall submit the quadruplicate originals of the proposed articles of incorporation to the attorney general for examination"; in the third sentence of (1) and in (2), substituted "commissioner" for "attorney general"; in the third sentence of (1), following "not in conflict with the constitution and laws of the United States or of this state, he shall" deleted "so certify and return such certificate and all sets of the articles to the commissioner. (2) When the articles of incorporation have been approved by the attorney general, the commissioner shall also"; in (1), deleted two references to the certificate of the attorney general; in (2), following "he shall refuse to approve the same and shall return" deleted "the quadruplicate sets thereof to the commissioner, together with a written statement of the reasons for his refusal to approve. The commissioner shall return"; and at the end of (2), substituted "a written statement of the reasons for his refusal to approve." for "the written statement of the attorney general."

Cross-References

Custody of records with Secretary of State, 2-6-111.

Administrative hearing before Commissioner, 33-1-701.

Certificate of incorporation, 35-1-204.

33-3-203. Amendment of articles of incorporation — grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of such a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.

(2) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(3) Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth such amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate, together with the filing fee specified therefor in 33-2-708. If he finds that the certificate and amendments comply with law, the commissioner shall endorse his approval upon each of the quadruplicate originals and return them to the insurer. The insurer shall forthwith file one set of such endorsed articles of amendment with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county in which is located the insurer's principal place of business, and retain the remaining set in the corporate records. The amendment shall be effective when such filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, he shall not approve the same and shall return the quadruplicate certificate of amendment to the insurer together with his written statement of reasons for nonapproval. The filing fee shall not be returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such reduction. If any such reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as such stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of such reduction.

History: En. Sec. 424, Ch. 286, L. 1959; R.C.M. 1947, 40-4707.

Cross-References

Corporate acknowledgment, 1-5-101, 1-5-204.

Hearings by Commissioner, 33-1-701.

33-3-204. Initial qualifications — domestic mutuals. (1) When newly organized, a domestic mutual insurer may be authorized to transact any of the kinds of insurance as are permitted under 33-2-108.

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code and must have unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance as in 33-2-109, subject further to the additional special surplus requirements of 33-2-110 applicable to such stock insurer. The minimum amount of surplus must thereafter be maintained unimpaired and placed on deposit with the commissioner. The deposit is subject to the provisions of chapter 2, part 6, of this title and 33-2-111.

History: En. Sec. 425, Ch. 286, L. 1959; R.C.M. 1947, 40-4708; amd. Sec. 10, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "any of the kinds of insurance as are permitted under 33-2-108" for "any one of the kinds of insurance listed in the schedule contained in subsection (2) of this section" in (1); substituted "the insurer must . . . have unimpaired surplus funds . . . provisions of chapter 2, part 6, of this title and 33-2-111" for guidelines tied to a schedule in (2), which was also deleted.

Cross-References

Application for original certificate of authority, 33-2-115.

Curing impairment of capital deficiency — any lawful means authorized, 33-3-433.

33-3-205. Formation of mutual insurer — bond. (1) Before soliciting applications for insurance to raise surplus funds to qualify for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of $50,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) for the prompt return to applicant members of all premiums collected in advance;

(b) for payment of all indebtedness of the corporation; and

(c) for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within 1 year after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner $50,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than $50,000, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.

History: En. Sec. 426, Ch. 286, L. 1959; R.C.M. 1947, 40-4709; amd. Sec. 11, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "applications for insurance to raise surplus funds to qualify" for "any applications for insurance required under 33-3-204 as qualification" in (1); increased the bond or cash deposit amount from $15,000 to $50,000 in three places in (1) and (2).

33-3-206. Applications for insurance in formation of mutual insurer. (1) Upon receipt of the commissioner's approval of the bond or deposit as provided in 33-3-205, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.

(3) All such applications shall provide that:

(a) issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) no insurance is in effect unless and until the certificate of authority has been issued; and

(c) the prepaid premium or deposit and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than 1 year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applicants for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subsection(3)(c) above to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 17.

History: **En. Sec. 427, Ch. 286, L. 1959; R.C.M. 1947, 40-4710.**

33-3-207. Formation of mutuals — trust deposit of premiums — issuance of policies. (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with 33-3-206(3)(c). The corporation shall file an executed copy of such trust agreement with the commissioner.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

History: **En. Sec. 428, Ch. 286, L. 1959; R.C.M. 1947, 40-4711.**

33-3-208. Formation of mutuals — failure to qualify. If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within 1 year after the date of its certificate of incorporation, its corporate powers shall cease and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under 33-3-207.

History: **En. Sec. 429, Ch. 286, L. 1959; R.C.M. 1947, 40-4712.**

33-3-209 through 33-3-214 reserved.

33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by Title 35, chapter 1, part 8, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13.

History: En. Sec. 460, Ch. 286, L. 1959; R.C.M. 1947, 40-4743; amd. Sec. 13, Ch. 198, L. 1979; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (3).

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, right to vote may be limited to members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (d) above, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under subsection (c) above;

(f) shares are so offered to policyholders at a price not greater than to be thereafter offered to others but at not more than double the par value of such shares;

(g) the plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of such required capital.

History: **En. Sec. 461, Ch. 286, L. 1959; R.C.M. 1947, 40-4744.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) below.

(2) No such merger or consolidation may be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) is contrary to law;

(b) inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent, or employee of any insurer party to such merger or consolidation may receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or agreement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to

the commissioner such pertinent information and suggestions as they may deem proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: (1) thru (6)En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971; Sec. 40-4745, R.C.M. 1947; (7)En. Sec. 467, Ch. 286, L. 1959; Sec. 40-4750, R.C.M. 1947; R.C.M. 1947, 40-4745, 40-4750(4); amd. Sec. 14, Ch. 198, L. 1979.

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying his reasons therefor.

(6) Section 33-3-217(5) shall also apply as to mergers and consolidations of such mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: En. Secs. 463, 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4746, 40-4750(4).

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

Part 3

Management

33-3-301. Bylaws of mutual. (1) A domestic mutual insurer shall have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify, and revoke bylaws.

(2) The bylaws shall provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of such meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

History: En. Sec. 432, Ch. 286, L. 1959; R.C.M. 1947, 40-4715.

33-3-302. Bylaws of stock insurer — modification. Any bylaw so adopted at any meeting of stockholders of a domestic insurer shall not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions; but the board of directors shall not so revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. Any revocation or modification of bylaws made by the directors under this provision shall be presented at the next following meeting of stockholders for the information of the stockholders.

History: En. Sec. 433, Ch. 286, L. 1959; R.C.M. 1947, 40-4716.

33-3-303. Meetings of stockholders or members. (1) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state.

(2) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.

(3) Each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than 20 days' notice shall be given of such meeting in the manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

(5) If more than 15 months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call such a meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it shall be the duty of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue such call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members shall constitute a quorum;

(b) the stockholders or members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend such meeting, any stockholder or member present may be elected to act temporarily in lieu of any such absent officer;

(d) if a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director the adjournment must be to the next day and those who attend the second of such adjourned meetings, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

History: **En. Sec. 434, Ch. 286, L. 1959; R.C.M. 1947, 40-4717.**

33-3-304. Proxies — corrupt practices — penalty. (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease 11 months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after 3 years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(3) No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall be punishable as provided in 33-1-104.

History: **En. Secs. 435, 436, Ch. 286, L. 1959; R.C.M. 1947, 40-4718, 40-4719.**

33-3-305. Directors — number and election. (1) The affairs of every domestic insurer shall be managed by the number of directors fixed in the insurer's bylaws, which shall not be less than 5 or more than 21 directors.

(2) Directors must be elected from and by the members or stockholders of a domestic insurer, except as provided in 33-3-306, at such time and place and for such terms, not exceeding 3 years, as may be provided in the insurer's bylaws.

(3) The term of a director shall extend until his successor has been elected and has qualified.

History: **En. Sec. 437, Ch. 286, L. 1959; R.C.M. 1947, 40-4720.**

33-3-306. Participation of policyholders in election of directors of stock insurer. The bylaws of a domestic stock life insurer may provide a plan for its policyholders to participate with stockholders in the election of its directors.

History: **En. Sec. 438, Ch. 286, L. 1959; R.C.M. 1947, 40-4721.**

33-3-307. Bond of officers. (1) The president, secretary, and treasurer of every mutual insurer shall each file with the commissioner and thereafter maintain in force so long as he is such an officer a fidelity bond in the sum of $10,000 issued by an authorized corporate surety in favor of the insurer. In lieu of individual bonds, all such officers may be covered under a blanket bond for the same respective amounts, and which blanket bond shall likewise be filed with the commissioner.

(2) The premium for the bond shall be payable by the insurer.

(3) No such bond shall be subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of such cancellation.

(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.

(5) This section shall not be deemed to limit the amount of bonded protection which the insurer may carry as to any officer.

History: En. Sec. 439, Ch. 286, L. 1959; R.C.M. 1947, 40-4722.

33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

(3) This section shall not prohibit such a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

History: En. Sec. 440, Ch. 286, L. 1959; R.C.M. 1947, 40-4723.

33-3-309. Management and exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) The commissioner shall disapprove any such contract if he finds that it:

(a) subjects the insurer to excessive charges;

(b) is to extend for an unreasonable length of time;

(c) does not contain fair and adequate standards of performance; or

(d) contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

History: En. Sec. 441, Ch. 286, L. 1959; R.C.M. 1947, 40-4724.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-310. Agreement not to sell property prohibited. No insurer shall enter into any agreement to withhold from sale any of its property. Disposition of an insurer's property shall be at all times within the control of its board of directors.

History: En. Sec. 444, Ch. 286, L. 1959; R.C.M. 1947, 40-4727.

Part 4

Finance

33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state; and

(b) such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) below.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal or concealment of such records or assets or material part thereof from the commissioner is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

History: En. Sec. 442, Ch. 286, L. 1959; R.C.M. 1947, 40-4725; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (3).

33-3-402. Vouchers for expenditures. (1) No insurer shall make any disbursement of $100 or more unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein.

(4) If a voucher cannot be obtained, the expenditure referred to in subsection (1) above shall be evidenced by an affidavit in which is set forth the character and object of the expenditure and the reasons for not obtaining a voucher therefor.

History: En. Sec. 443, Ch. 286, L. 1959; R.C.M. 1947, 40-4726.

33-3-403 through 33-3-410 reserved.

33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

History: En. Sec. 446, Ch. 286, L. 1959; R.C.M. 1947, 40-4729.

33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment shall be computed on the basis of the premiums earned on such policy during the period to which the assessment relates.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

History: **En. Sec. 447, Ch. 286, L. 1959; R.C.M. 1947, 40-4730.**

33-3-413. Enforcement of contingent liability. (1) Any assessment made by an insurer under 33-3-412 or 33-3-433 shall be deemed to be prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer shall be deemed to be likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

History: **En. Sec. 448, Ch. 286, L. 1959; R.C.M. 1947, 40-4731.**

33-3-414. Nonassessable policies of mutual insurers. (1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

(3) No policy of a domestic mutual insurer which, pursuant to the commissioner's order, is without contingent liability and thereby nonassessable by its terms shall be subject to assessment for any debt or liability of the insurer.

History: **En. Sec. 449, Ch. 286, L. 1959; R.C.M. 1947, 40-4732.**

33-3-415. Insufficient reserves — nonassessable policies prohibited — revocation of authority. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder or renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability.

History: **En. Sec. 450, Ch. 286, L. 1959; R.C.M. 1947, 40-4733.**

33-3-416 through 33-3-420 reserved.

33-3-421. Participating policies. (1) If provided in its articles of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged. Any such domestic insurer which prior to January 1, 1961, has been issuing all or part of its policies on a participating basis without specific authorization in its articles of incorporation may continue to issue such policies on a basis not inconsistent with this section.

(2) After the third policy year no dividend otherwise earned shall be made contingent upon the payment of renewal premium on any policy.

History: **En. Sec. 451, Ch. 286, L. 1959; R.C.M. 1947, 40-4734.**

33-3-422. Dividends to stockholders. (1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under 33-3-431.

(3) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

History: **En. Sec. 452, Ch. 286, L. 1959; R.C.M. 1947, 40-4735.**

33-3-423. Dividends to mutual policyholders. (1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

History: **En. Sec. 453, Ch. 286, L. 1959; R.C.M. 1947, 40-4736.**

33-3-424. Illegal dividends — penalty. (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under 33-3-422 or 33-3-423 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

History: **En. Sec. 454, Ch. 286, L. 1959; R.C.M. 1947, 40-4737.**

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Misdemeanor — penalty, 46-18-212.

33-3-425 through 33-3-430 reserved.

33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 6% per annum, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose

originally intended. No repayment of such loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets.

History: En. Sec. 455, Ch. 286, L. 1959; R.C.M. 1947, 40-4738.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-432. Impairment of capital or assets. (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under 33-3-204 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under chapter 2, part 8, for the investment of the insurer's funds; if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient surplus under this code.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such 60-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 13; except that if such deficiency exists because of increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed.

History: En. Sec. 456, Ch. 286, L. 1959; R.C.M. 1947, 40-4739; amd. Sec. 12, Ch. 303, L. 1981; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 303 deleted "or 33-3-501" after "33-3-204" in (1).

Chapter 575 substituted "part 13" for "part 9" in (3).

33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's notice mentioned in 33-3-432 (1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under 33-3-432, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) Neither this section nor 33-3-432 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

History: En. Sec. 457, Ch. 286, L. 1959; R.C.M. 1947, 40-4740.

33-3-434. Directors' liability for losses during deficiency. The directors of the insurer shall be individually liable as to losses incurred under policies issued by the insurer after expiration of the period provided in 33-3-432 for curing any deficiency of the insurer's capital stock or surplus and prior to the curing of the deficiency.

History: En. Sec. 458, Ch. 286, L. 1959; R.C.M. 1947, 40-4741.

33-3-435. Stock transfer during impairment of capital. Any transfer of the stock of a domestic insurer made during the existence of any impairment of such insurer's capital does not release the stockholder making the transfer from any liability as a stockholder of such insurer which accrued prior to such transfer.

History: En. Sec. 459, Ch. 286, L. 1959; R.C.M. 1947, 40-4742.

33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered or date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

History: En. Sec. 466, Ch. 286, L. 1959; R.C.M. 1947, 40-4749.

33-3-437 through 33-3-440 reserved.

33-3-441. Equity securities of domestic stock insurance company — statement of ownership. (1) When used in 33-3-441 through 33-3-447, the term "equity security" means any stock or similar security; any security convertible, with or without consideration, into such a security or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter.

(3) If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: **En. Secs. 1, 6, Ch. 159, L. 1965; R.C.M. 1947, 40-4751, 40-4756.**

33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules. (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than 2 years after the date such profit was realized.

(3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions which the commissioner by rules may exempt as not comprehended within the purpose of this section.

History: **En. Sec. 2, Ch. 159, L. 1965; R.C.M. 1947, 40-4752.**

Cross-References

Promulgation of rules, 33-1-313.

33-3-443. Short sales of equity securities prohibited — time for delivery after sale. (1) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(a) does not own the security sold; or

(b) if owning the security, does not deliver it against such sale within 20 days thereafter or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965; R.C.M. 1947, 40-4753.

33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules. (1) The provisions of 33-3-442 shall not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965; R.C.M. 1947, 40-4754.

33-3-445. Exemptions — arbitrage transactions. The provisions of 33-3-441 through 33-3-443 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of 33-3-441 through 33-3-447.

History: En. Sec. 5, Ch. 159, L. 1965; R.C.M. 1947, 40-4755.

33-3-446. Exemptions — registered securities — holding by less than 100 persons. The provisions of 33-3-441 through 33-3-443 shall not apply to equity securities of a domestic stock insurance company if:

(1) such securities shall be registered or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(2) such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of 33-3-441 through 33-3-443 except for the provisions of this subsection (2).

History: En. Sec. 7, Ch. 159, L. 1965; R.C.M. 1947, 40-4757.

33-3-447. Rules of commissioner — classifications — effect. (1) The commissioner may make such rules as may be necessary for the execution of the functions vested in him by 33-3-441 through 33-3-446 and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction.

(2) No provision of 33-3-441 through 33-3-443 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965; R.C.M. 1947, 40-4758.

Cross-References

Promulgation of rules, 33-1-313.

Part 5

Insurance Operations

33-3-501. Repealed. Sec. 29, Ch. 303, L. 1981.

History: En. Sec. 430, Ch. 286, L. 1959; R.C.M. 1947, 40-4713.

33-3-502. Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publication and radio, television, and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. It shall not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

History: En. Sec. 445, Ch. 286, L. 1959; R.C.M. 1947, 40-4728.

Cross-References

Hearings by Commissioner, 33-1-701.

Suspension or revocation of certificate of authority, 33-2-118.

33-3-503. Membership in mutuals. (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for

or on its behalf for the purpose of such membership and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

(3) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

History: En. Sec. 431, Ch. 286, L. 1959; R.C.M. 1947, 40-4714.

CHAPTER 4

FARM MUTUAL INSURERS

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Part 1

General Provisions

33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517, and all amendments thereto, of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625, and all amendments thereto, of the Revised Codes of Montana, 1947;

(c) all insurers hereafter formed under this chapter.

(2) All such insurers may be referred to as "farm mutual insurers".

(3) Nothing in the insurance laws of this state shall be deemed to apply to or govern either directly or indirectly domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title also shall apply to farm mutual insurers to the extent so applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of such express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 13; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18.

History: En. Secs. 468, 520, Ch. 286, L. 1959; R.C.M. 1947, 40-4801, 40-4853; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (4).

Cross-References

Board of Hail Insurance — powers and duties, 2-15-3003; Title 80, ch. 2, part 2.

33-4-102. Definitions. (1) A "county" mutual insurer is an insurer authorized to insure only property located in the county wherein is located its principal office and in the counties in this state with boundaries contiguous with such principal office county.

(2) A "state" mutual insurer is an insurer authorized to insure property throughout the state.

(3) "Surplus" is the extent to which the value of an insurer's assets exceeds its liabilities.

History: En. Secs. 469, 481, Ch. 286, L. 1959; R.C.M. 1947, 40-4802, 40-4814.

33-4-103. Corporate powers in general. (1) An insurance corporation formed under this chapter or existing on January 1, 1961, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

(a) to have succession by its corporate name for the period stated in its articles;

(b) to sue and be sued in its corporate name;

(c) to adopt, use, and alter a corporate seal;

(d) to acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(e) to transact insurance;

(f) to conduct its affairs through its directors, officers, employees, agents, and representatives thereunto duly authorized;

(g) to make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation, and government of its affairs and property, including but not limited to calling and holding of meetings of its directors or members, and to modify or amend such bylaws;

(h) to exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles;

(i) to dissolve and wind up or be dissolved and wound up in the manner provided by law.

History: En. Sec. 479, Ch. 286, L. 1959; R.C.M. 1947, 40-4812.

Part 2

Formation

33-4-201. Eligible incorporators. (1) One hundred or more individuals residing in this state, each of whom is 18 years of age or more, who collectively own farm property as referred to in 33-4-501(1)(a) valued at not less than $500,000 which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than $5,000, may incorporate a state mutual insurer.

(2) Twenty-five or more individuals residing in this state, each of whom is 18 years or more of age, each of whom owns farm land or ranch land

valued at $5,000 or more in the county wherein is to be located the principal office of the proposed insurer or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in 33-4-501(1)(a) valued at not less than $125,000 which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971; R.C.M. 1947, 40-4807.

33-4-202. Declaration of intention to incorporate — articles of incorporation — fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form such a corporation, which declaration shall be signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) proposed articles of incorporation executed in quadruplicate by three or more of the incorporators and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property.

(2) The articles of incorporation shall state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name shall contain the words "farm mutual" or "rural mutual" together with the name of the county wherein is to be located its principal place of business. The name shall not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which office must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether it intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of its existence, which may be perpetual;

(g) the number of its directors, which shall not be less than 5 or more than 11; also the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members and until their successors are elected and qualified;

(h) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of the property desired insured owned by each in the county or counties where the operations of the corporation are to be carried on.

(3) At the time of filing of the articles of incorporation as provided in subsection (1) above, the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit all such fees with the state treasurer to the credit of the general fund of this state.

History: En. Sec. 475, Ch. 286, L. 1959; R.C.M. 1947, 40-4808.

Cross-References
Acknowledgments, Title 1, ch. 5.

33-4-203. Approval of articles — commencement of corporate existence. (1) Upon receipt thereof, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, he shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner deems the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, he shall reject the name applied for and shall notify the incorporators thereof.

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse his approval upon each set of the articles, file one set in his office, and forward the other three sets of articles to the incorporators. The incorporators shall file one of such sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is located the principal place of business of the corporation and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles shall be made a part of the corporation's records.

(4) The corporation shall have legal existence as such upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3) above, but it shall not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505.

History: En. Sec. 476, Ch. 286, L. 1959; R.C.M. 1947, 40-4809.

Cross-References
Secretary of State — fee for filing documents, 2-6-103.
County Clerk — filing fee, 7-4-2631.

33-4-204. Amendment of articles. A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting of members called for that purpose, amend its articles of incorporation to extend its corporate duration or in any particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. The amended articles of incorporation shall be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment shall be contained in the notice given of any such annual or special meeting.

History: En. Sec. 477, Ch. 286, L. 1959; R.C.M. 1947, 40-4810.

33-4-205. Certified copies of articles as evidence. A copy of the articles of incorporation of a farm mutual insurer and any amendments thereof filed pursuant to law and certified by the commissioner shall be received in all courts and other places as prima facie evidence of the facts therein stated and of the due incorporation of the insurer.

History: En. Sec. 478, Ch. 286, L. 1959; R.C.M. 1947, 40-4811.

Cross-References
Evidence — public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

33-4-206. Initial qualifications. When applying for an original certificate of authority as an insurer newly organized in this state, the insurer must have surplus as required by 33-4-401, be otherwise qualified therefor under this code, and:

(1) if a county mutual insurer, it must have received acceptable bona fide written applications from 25 separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least $100,000. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(2) if a state mutual insurer, it must have received acceptable bona fide written applications from 100 separate persons, each for substantial insurance, aggregating at least $500,000 of the kinds of insurance proposed to be transacted. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(3) if to insure growing crops against loss or damage by hail, it must have received applications for such hail insurance from not less than 100 persons resident in Montana owning in the aggregate not less than 5,000 acres of grain. Each such applicant must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact insurance.

History: **En. Sec. 480, Ch. 286, L. 1959; R.C.M. 1947, 40-4813.**

Cross-References
State hail insurance, 2-15-3003; Title 80, ch. 2, part 2.
Certificate of authority, 33-4-505.

Part 3

Management

33-4-301. Bylaws — adoption — power to amend. Upon commencement of the legal existence of an insurer, its initial board of directors shall adopt such original bylaws, not inconsistent with the state constitution or this chapter, as may be deemed necessary for the management of its affairs. The bylaws shall be subject to the approval of the insurer's members at their next succeeding meeting. The members shall otherwise have the power to make, modify, and revoke bylaws.

History: **En. Sec. 484, Ch. 286, L. 1959; R.C.M. 1947, 40-4817.**

33-4-302. Bylaws — contents. (1) The bylaws of a farm mutual insurer shall provide:

(a) as to the liability of each member for payment of the expenses and losses of the insurer and what obligations shall be given therefor when a person applies for insurance;

(b) as to the time when obligations of members for losses and expenses become due;

(c) for limitation of liability of members for the payment of expenses and losses of the insurer;

(d) the terms of office of the directors. At least part of the directors shall be elected at each annual meeting of members. The term of any director shall not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member shall be permitted to cast at least one vote, either in person or, if so authorized in the bylaws, by proxy, for each director to be elected and may cumulate his votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case no election occurs at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) above;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) as to who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what shall be contained on the corporate seal and when the seal shall be required to be used;

(l) such other matters as may be deemed necessary or convenient for the management of the affairs of the insurer.

History: En. Sec. 485, Ch. 286, L. 1959; R.C.M. 1947, 40-4818.

33-4-303. Bylaws binding upon members. The bylaws of a farm mutual insurer are binding upon all of its members and as from time to time amended are a part of the contracts of insurance between the insurer and its members.

History: En. Sec. 486, Ch. 286, L. 1959; R.C.M. 1947, 40-4819.

33-4-304. Annual meetings of members — where held. Annual meetings of the members of a farm mutual insurer may be held at its principal business office or at any other place located in any county in this state in which the insurer is authorized to transact insurance.

History: En. Sec. 488, Ch. 286, L. 1959; R.C.M. 1947, 40-4821.

33-4-305. Annual meeting — presentation of annual statement. The annual statement of the insurer as required to be filed with the commissioner under 33-4-313 shall be presented at the annual meeting of the members of the insurer next following the end of the calendar year to which such statement relates.

History: **En. Sec. 489, Ch. 286, L. 1959; R.C.M. 1947, 40-4822.**

33-4-306. Adjourned annual meetings — notice. Notice of any adjourned annual meeting of members shall be given to the members of an insurer in the same manner as provided in the insurer's bylaws for the regular annual meeting of members.

History: **En. Sec. 490, Ch. 286, L. 1959; R.C.M. 1947, 40-4823.**

33-4-307. Members' voting rights. Each member of an insurer is entitled to one vote upon each matter coming to a vote at meetings of members of the insurer. A member may vote by written proxy if and as may be provided in the insurer's bylaws. No such proxy shall be made irrevocable or for longer than 1 year.

History: **En. Sec. 491, Ch. 186, L. 1959; R.C.M. 1947, 40-4824.**

33-4-308. Board of directors — quorum. (1) The general management of the affairs of a farm mutual insurer is vested in its board of directors.

(2) A majority of the directors shall constitute a quorum to do business at any lawful meeting of the board.

History: **En. Sec. 494, Ch. 286, L. 1959; R.C.M. 1947, 40-4827.**

33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer shall be elected by its members by ballot for terms not to exceed 3 years and shall hold office until their respective successors are elected and have qualified.

(2) No individual shall serve as a director unless a member of the insurer.

History: **En. Sec. 495, Ch. 286, L. 1959; R.C.M. 1947, 40-4828.**

33-4-310. Officers. The board of directors of an insurer shall elect from their number a president and vice-president. The board shall also elect a secretary and treasurer or a secretary-treasurer, who may or may not be members of the insurer. Officers shall hold their offices for 1 year and until their successors are elected and qualified, unless earlier removed by the board of directors.

History: **En. Sec. 496, Ch. 286, L. 1959; R.C.M. 1947, 40-4829.**

33-4-311. Bonds of officers. The treasurer and secretary of an insurer shall each give bonds to the insurer for the faithful performance of their duties, in such amount as is designated by the board of directors. Any such bond shall be one issued by an authorized corporate surety.

History: **En. Sec. 497, Ch. 286, L. 1959; R.C.M. 1947, 40-4830.**

Cross-References

Surety bonds, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-4-312. Officers, agents, and employees not licensed. No agent of an insurer shall be required to obtain a license or authority from any public official to transact business for such insurer, nor shall the insurer or any of its officers, agents, or employees be required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.

History: En. Sec. 498, Ch. 286, L. 1959; R.C.M. 1947, 40-4831.

33-4-313. Annual statement — report — filing. (1) The president and secretary of every insurer, on or before March 1 each year, shall prepare, affirm under oath, affix the corporate seal thereto, and file with the commissioner, on forms as prescribed and furnished by him, an annual statement for the preceding calendar year showing the condition of such insurer as of December 31 of such year and exhibiting the following facts:

(a) the names of the president and secretary;

(b) the date of the annual meeting;

(c) the amount of insurance in force;

(d) the number of members;

(e) the number of assessments made during the year;

(f) the amount paid in losses during the year;

(g) the amount of the losses claimed and not paid, with the reason for nonpayment;

(h) the number of members withdrawn, suspended, and expelled during the year;

(i) the number of new members admitted during the year;

(j) the expenses during the year;

(k) the amount of money on hand;

(l) the amount and character of the insurer's assets;

(m) the amount of the insurer's liabilities, including any reserves required to be established under this chapter;

(n) such other information concerning the insurer's affairs as the commissioner may reasonably require.

(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404.

(3) A copy of such annual statement and report of expenditures for educational purposes shall be filed by each county mutual insurer with the county clerk and recorder of the county wherein is located its principal place of business.

History: En. Sec. 499, Ch. 286, L. 1959; R.C.M. 1947, 40-4832.

33-4-314. Annual statement — exclusive report — penalty for failure to file. (1) No report, statement, or return of any nature shall be required of any farm mutual insurer other than those required by 33-4-313.

(2) The commissioner may suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required.

History: En. Sec. 500, Ch. 286, L. 1959; R.C.M. 1947, 40-4833.

Cross-References

Certificate of authority, 33-4-505.

33-4-315. Examination by commissioner — expense. (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

(2) The charges to be paid by the insurer to the commissioner and his examiners for investigation and examinations provided for in subsection (1) above shall not exceed $100 in any one calendar year unless otherwise expressly authorized by the insurer.

History: En. Sec. 501, Ch. 286, L. 1959; R.C.M. 1947, 40-4834.

33-4-316. Records — inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer shall be located at its principal place of business or, in the case of a county mutual insurer, at such place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer shall be available for inspection by the insurer's directors and officers and by the commissioner or his duly constituted examiner at all reasonable times.

History: En. Sec. 508, Ch. 286, L. 1959; R.C.M. 1947, 40-4841.

Part 4

Finance

33-4-401. Surplus funds required. A domestic farm mutual insurer may hereafter be authorized to transact insurance if otherwise in compliance with the applicable provisions of this chapter, if it has and thereafter maintains surplus funds as follows:

(1) if a state mutual insurer, surplus of not less than $100,000;

(2) if a county mutual insurer, surplus of not less than $20,000; or

(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.

History: En. Sec. 482, Ch. 286, L. 1959; R.C.M. 1947, 40-4815.

33-4-402. Members' liability — limitation. All liability of the members of a farm mutual insurer shall be as limited in the insurer's bylaws. As to insurers transacting business on the cash premium plan, the limitation shall comply with 33-4-504(4). No member shall be required to pay more than the full amount of his obligation given to the insurer or of his liability as provided for in the bylaws.

History: En. Sec. 492, Ch. 286, L. 1959; R.C.M. 1947, 40-4825.

33-4-403. Investments. (1) When so directed by a majority vote of its members present at a duly called and held meeting of members, the directors of a farm mutual insurer shall have power to invest the insurer's funds or any part thereof in any of the following:

(a) bonds or other securities issued by the United States government or by any agency thereof;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency thereof;

(c) general obligation bonds or warrants of any state, county, or city, when recommended by the commissioner and approved by the department of commerce;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3) below;

(e) common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers for the purpose of offering companion insurance products that farm mutual insurers are prohibited from selling. Such investment may not exceed one-third of the assets of the farm mutual insurer.

(2) At the time of making any such investment the document evidencing the same must be stamped with the name of the insurer with the following notation printed or written thereon: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) No real estate loan shall be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. No such loan shall be for a term longer than 10 years. The foregoing provisions shall not be deemed to prevent the renewal or extension of loans already made and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans which are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of such loans; nor shall such provisions be deemed to prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors such subsequent liens are necessary further to secure the payment of any debts and save the insurer from loss.

History: En. Sec. 502, Ch. 286, L. 1959; R.C.M. 1947, 40-4835; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 145, Ch. 575, L. 1981; amd. Exec. Ord. No. 16-81; amd. Sec. 1, Ch. 77, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(e).

1981 Amendment — Commissioner Correction: In (1)(c), section 145, Ch. 575, L. 1981, changed "state examiner" to "department of community affairs". The department of community affairs was abolished by Ch. 274, L. 1981, and the approving function in (1)(c) was not specifically transferred. However, subsection (5), sec. 6, Ch. 274, L. 1981, provided: "The governor may by executive order assign to a department in a manner consistent with this act functions allocated to the department of community affairs by the 47th legislature and not transferred by this act." By Executive Order No. 16-81 the governor transferred the approving function from the department of community affairs to the department of commerce, and the code commissioner has corrected the reference accordingly.

Cross-References

Restrictive endorsements — negotiable instruments, 30-3-205.

33-4-404. Expenditure of funds for educational purposes. An insurer may spend in any one year up to 5% of its net earnings of the preceding year for educational purposes. A complete and itemized report of such expenditures shall be filed by the insurer as part of its annual report required under 33-4-313.

History: En. Sec. 503, Ch. 286, L. 1959; R.C.M. 1947, 40-4836.

33-4-405. Safety fund. (1) Any domestic farm mutual insurer may create a safety fund, in addition to any surplus required under 33-4-401 or reserve otherwise required, for the purpose of paying insured losses or lawful expenses or obligations of the insurer as they are incurred.

(2) The safety fund shall not exceed in amount 3% of the total amount of insurance in force in the insurer.

(3) The safety fund shall not be used for any purpose except as specified in subsection (1) above.

History: En. Sec. 504, Ch. 286, L. 1959; R.C.M. 1947, 40-4837.

33-4-406. Reserves — cash premium plan. Each insurer transacting business on the cash premium plan shall maintain the following reserves:

(1) a loss reserve, in amount reasonably adequate to pay in full all losses already incurred but currently unpaid. The amount subsequently paid on such losses shall be credited against this reserve.

(2) a reserve for unearned premiums, which reserve shall be computed at 50% of net premiums (gross premiums less premiums returned) charged and collected for unexpired policy periods that commenced during the calendar year covered by the financial statement plus 100% of such net premiums charged and collected in advance for policy periods that are to commence after such calendar year. In the alternative, the insurer may at its option compute its entire reserve for unearned premiums as the aggregate amount of the pro rata unearned premiums for each policy in force as at the end of the calendar year to be covered by the financial statement.

History: En. Sec. 505, Ch. 286, L. 1959; R.C.M. 1947, 40-4838.

33-4-407. Profits or dividends. No insurer shall accumulate any profits as such or pay any dividends. This provision shall not be deemed to prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by it under this chapter or a safety fund as authorized under 33-4-405 or from accumulating and maintaining other voluntary reserves for such purposes and in such amounts as may be reasonable. Limitations upon any such accumulations and the purposes thereof may be provided for in the insurer's bylaws.

History: En. Sec. 506, Ch. 286, L. 1959; R.C.M. 1947, 40-4839.

33-4-408. Deficiency of surplus. (1) If the surplus funds of a farm mutual insurer at any time fall below the amount required to be maintained under this chapter, the insurer shall cure such deficiency within 6 months thereafter, notwithstanding that new losses or expenses may be incurred within such 6-month period.

(2) If the deficiency is not so cured, the commissioner may, upon the insurer's written application therefor, allow an additional reasonable period, not to exceed 6 months, for the curing of the deficiency.

(3) If the deficiency is not so cured within the first 6-month period, if additional time is not so applied for, or within such additional period as the commissioner may so allow, the commissioner shall forthwith suspend or revoke the insurer's certificate of authority.

History: **En. Sec. 507, Ch. 286, L. 1959; R.C.M. 1947, 40-4840.**

Cross-References

Certificate of authority, 33-4-505.

33-4-409. Fees and taxes. Except for the fees for filing articles of incorporation as provided in 33-4-202 and 33-4-203, for issuance and renewal of certificate of authority as provided in 33-4-505, and for costs of examination by the commissioner as limited in 33-4-315(2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer.

History: **En. Sec. 509, Ch. 286, L. 1959; R.C.M. 1947, 40-4842.**

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-4-410. Losses — notice — adjustment. (1) Every member of a domestic farm mutual insurer who has sustained any insured loss or damage shall immediately notify the insurer's secretary thereof and of the amount of damage or loss claimed.

(2) Upon receipt of the notice of loss referred to in subsection (1) above, the secretary shall notify the person or persons authorized by the bylaws of such insurer to ascertain the amount of the loss or damage and adjust the same.

History: **En. Sec. 514, Ch. 286, L. 1959; R.C.M. 1947, 40-4847.**

33-4-411. Arbitration — committee — compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if so provided for in the insurer's bylaws, the matter shall be submitted to three persons as a committee of reference, one of whom shall be selected by the claimant, one by the insurer, and the third by such two persons, all of whom shall be sworn to a faithful and impartial investigation and award.

(2) The committee of reference shall have authority to examine witnesses and determine all matters in dispute. The decision or award of the committee shall be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award shall not be made until after maturity of such crop. The decision or award of the committee shall be final and binding upon all parties, unless an interested party appeals to the court within 30 days thereafter.

(3) The compensation of each member of any such committee shall be at the rate of $10 per day for each day of service in the discharge of his duties. Such compensation shall be paid by the claimant, unless the award of the

committee exceeds the sum theretofore offered by the insurer in settlement of the claim and in which case the compensation shall be paid by the insurer.

History: **En. Sec. 515, Ch. 286, L. 1959; R.C.M. 1947, 40-4848.**

33-4-412. Obligations or assessments due — losses payable. (1) Obligations or assessments of members for losses and expenses become due and payable at such time as may be provided in the bylaws of the insurer, and the insurer shall use due diligence to collect each obligation or assessment.

(2) Any valid claim for an insured loss against an insurer transacting business on the assessment plan shall not be payable by the insurer until 30 days after such obligations of the members are due and payable.

History: **En. Sec. 516, Ch. 286, L. 1959; R.C.M. 1947, 40-4849.**

33-4-413. Suit to collect obligations — liability of directors or officers. (1) An insurer may institute a suit against any member of such insurer if the member fails to pay when due any obligation or liability of the member given such insurer under the provisions of this chapter.

(2) The directors or officers of an insurer are liable in their individual capacity to the person sustaining an insured loss if they willfully refuse or neglect to perform the duties imposed upon them by the provisions of this section.

History: **En. Sec. 517, Ch. 286, L. 1959; R.C.M. 1947, 40-4850.**

33-4-414. Proportionate payment of losses. If the aggregate whole amount of the members' obligations to an insurer transacting business on the assessment plan are insufficient to pay all valid claims for losses under the insurer's contracts of insurance after necessary expenses in any one year, then such claimants insured by the insurer shall receive their proportionate share of the funds realized from such obligations in full satisfaction of such losses.

History: **En. Sec. 518, Ch. 286, L. 1959; R.C.M. 1947, 40-4851.**

33-4-415. Suit to collect for loss. If the insurer fails to pay any insured loss when due, an action may be maintained against it to collect for such loss, but subject to 33-4-414 as to assessment plan insurers.

History: **En. Sec. 519, Ch. 286, L. 1959; R.C.M. 1947, 40-4852.**

Part 5

Insurance Operations

33-4-501. Insuring powers in general. (1) A farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) farm dwellings and buildings, including the usual contents therein, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of such insurer or by his spouse;

(b) dwellings designed for occupancy by not over two families, together with the usual contents thereof, situated in an incorporated city or town if such property is owned by a member of the insurer or by his spouse and if such member has other insurance of farm property with the insurer for a substantial amount;

(c) rural schoolhouses and buildings used in connection therewith, rural community houses or rural churches or other rural public buildings.

(2) Except as provided in subsection (1)(c) above, an insurer shall not insure any property not owned by a member or by his spouse.

(3) An insurer shall not insure any property situated within the limits of incorporated towns or cities except as provided in subsection (1)(b) above and shall not so insure unless it has and maintains the surplus funds as required under 33-4-401.

History: En. Sec. 470, Ch. 286, L. 1959; R.C.M. 1947, 40-4803.

33-4-502. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed 10% of the admitted assets of the insurer or $50,000, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against.

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967; amd. Sec. 1, Ch. 94, L. 1975; R.C.M. 1947, 40-4804; amd. Sec. 1, Ch. 319, L. 1979; amd. Sec. 1, Ch. 132, L. 1981.

Compiler's Comments

1981 Amendment: Increased maximum amount of single risk insurance from $35,000 to $50,000 in (1).

33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and may accept reinsurance from other farm mutual insurers.

History: En. Sec. 472, Ch. 286, L. 1959; R.C.M. 1947, 40-4805.

Cross-References

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on the cash premium plan altogether or on the assessment plan altogether, whichever plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems will be adequate to cover losses and expenses incurred during the term of such insurance.

(3) If transacting business on the assessment plan, the insurer will depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred. This provision shall not be construed, however, as preventing any such insurer from collecting from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance; nor shall it be deemed to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event the cash premium charged is found by it to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall provide a specific limitation as to the amount which can be so assessed in any one policy year, such amount to be not less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year.

History: **En. Sec. 473, Ch. 286, L. 1959; R.C.M. 1947, 40-4806.**

33-4-505. Certificate of authority required — issuance — renewal — fee. (1) No farm mutual insurer shall insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application therefor the commissioner shall issue such a certificate of authority to every insurer qualified therefor under this chapter.

(3) Every such certificate of authority shall expire at midnight on the April 30 next following its date of issuance unless theretofore revoked for cause or otherwise terminated. Unless he finds that the insurer is not qualified therefor under this chapter, the commissioner shall issue to the insurer a renewal certificate of authority on or before May 1 of each year. The commissioner shall not issue any such renewal certificate of authority to any insurer which has not filed its annual statement and report of expenditures as required under 33-4-313.

(4) For each issuance and each renewal of its certificate of authority, the insurer shall pay to the commissioner a fee of $5 if a county mutual insurer or $20 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the general fund of this state.

(5) A certificate of authority shall be subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to herein.

History: **En. Sec. 483, Ch. 286, L. 1959; R.C.M. 1947, 40-4816.**

Cross-References

Contested case administrative hearings, 2-4-102.

33-4-506. Members — minimum membership. (1) No person may become a member of a farm mutual insurer except by insuring therein property owned by him so insurable under this chapter.

(2) The membership of such an insurer shall consist of the persons lawfully insuring therein.

(3) The total membership of the insurer shall at all times be not less than the number of persons required by 33-4-201 to incorporate such an insurer.

History: **En. Sec. 487, Ch. 286, L. 1959; R.C.M. 1947, 40-4820.**

33-4-507. Withdrawal of member — cancellation by insurer. (1) Any member of an insurer may withdraw therefrom by surrendering his policy to the insurer for cancellation and paying all obligations then owing by him to the insurer.

(2) The insurer has power to cancel the policy of any member for any cause deemed adequate by the insurer and upon not less than 10 days' written

notice in advance of cancellation delivered to the member or mailed to his address last of record with the insurer.

History: **En. Sec. 493, Ch. 286, L. 1959; R.C.M. 1947, 40-4826.**

33-4-508. Application for insurance. All persons desiring insurance shall make written application therefor to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make such advance payment in cash as insurer may require.

History: **En. Sec. 510, Ch. 286, L. 1959; R.C.M. 1947, 40-4843.**

33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer shall be filed with the commissioner at least 30 days in advance of any such use. The commissioner shall disapprove any such form found by him to be unlawful, illegible, or misleading. An insurer shall not use any such form after it has received the commissioner's notice of disapproval setting forth the reasons therefor.

History: **En. Sec. 511, Ch. 286, L. 1959; R.C.M. 1947, 40-4844.**

Cross-References

Contested case administrative proceedings, 2-4-102.

33-4-510. Rates — filing — discrimination. (1) A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects of insurance covered for like perils under like policies and having substantially the same insuring, exposure, and underwriting characteristics.

(2) Notwithstanding any provision of subsection (1) or chapter 18, part 2, of this title, a farm mutual insurer transacting insurance under this chapter may refuse to renew a casualty or liability policy upon nonpayment of dues to the farm mutual insurer if payment of dues is a condition for obtaining or continuing such insurance.

History: **En. Sec. 512, Ch. 286, L. 1959; R.C.M. 1947, 40-4845; amd. Sec. 1, Ch. 319, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

33-4-511. Insurance of schools, community houses, and churches. (1) No contract of insurance effected upon the property of any school district, rural community house, rural church, or rural public building pursuant to 33-4-501 shall be deemed to constitute such school district or the owners of any such community house, church, or public building a member of the insurer.

(2) No contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in 33-4-501(1)(c) shall be invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a trustee, director, agent, custodian, or manager or in any way in control, supervision, or management of any or all of the property so insured.

History: **En. Sec. 513, Ch. 286, L. 1959; R.C.M. 1947, 40-4846.**

CHAPTER 5

RECIPROCAL INSURERS

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Part 1

General Provisions

33-5-101. Scope of chapter — existing insurers. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after January 1, 1961, comply with the provisions of this chapter and shall make such amendments

to their subscribers' agreement, power of attorney, policies, and other documents and accounts and perform such other acts as may be required for such compliance.

History: **En. Sec. 540, Ch. 286, L. 1959; R.C.M. 1947, 40-5003.**

33-5-102. Definitions. (1) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an attorney-in-fact common to all such persons.

(2) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves.

History: **En. Secs. 538, 539, Ch. 286, L. 1959; R.C.M. 1947, 40-5001, 40-5002.**

33-5-103. Name — suits. A reciprocal insurer shall:

(1) have and use a business name. The name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting".

(2) sue and be sued in its own name.

History: **En. Sec. 542, Ch. 286, L. 1959; R.C.M. 1947, 40-5005.**

33-5-104. Attorney — not doing business. (1) "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

History: **En. Sec. 543, Ch. 286, L. 1959; R.C.M. 1947, 40-5006.**

Cross-References

Attorney — not an agent to be licensed, 33-17-103.

Part 2

Formation

33-5-201. Organization of reciprocal insurer. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

History: En. Sec. 545, Ch. 286, L. 1959; R.C.M. 1947, 40-5008; amd. Sec. 15, Ch. 198, L. 1979.

Cross-References

Certificate of authority, 33-5-502.

33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise such right.

History: En. Sec. 564, Ch. 286, L. 1959; R.C.M. 1947, 40-5027.

Cross-References

Contested case administrative proceedings, 2-4-102.

Hearings by Commissioner, 33-1-313.

Part 3

Management

33-5-301. Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) the powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) the general services to be performed by the attorney;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses to be paid by the insurer; and

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 1 or more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective as to a domestic reciprocal insurer until approved by the commissioner.

History: En. Sec. 547, Ch. 286, L. 1959; R.C.M. 1947, 40-5010.

Cross-References

Power of attorney — agency generally, Title 28, ch. 10.

33-5-302. Modifications. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively or as to any insurance contract issued prior thereto.

History: En. Sec. 548, Ch. 286, L. 1959; R.C.M. 1947, 40-5011.

33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands and that he will not withdraw or appropriate to his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

History: En. Sec. 549, Ch. 286, L. 1959; R.C.M. 1947, 40-5012.

Cross-References

Surety bonds, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-5-304. Action on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

History: **En. Sec. 550, Ch. 286, L. 1959; R.C.M. 1947, 40-5013.**

33-5-305. Subscribers' advisory committee — duties. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) have such additional powers and functions as may be conferred by the subscribers' agreement.

History: **En. Sec. 555, Ch. 286, L. 1959; R.C.M. 1947, 40-5018.**

Part 4

Finance

33-5-401. Surplus funds required. (1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than $400,000;

(b) to transact casualty insurance, other than workers' compensation, surplus funds of not less than $400,000.

(2) In addition to surplus required to be maintained under subsection (1) above, the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

History: **En. Sec. 544, Ch. 286, L. 1959; R.C.M. 1947, 40-5007; amd. Sec. 1, Ch. 307, L. 1979.**

Cross-References

Casualty insurance — definition, 33-1-206.

Property insurance — definition, 33-1-210.

33-5-402. Contributions to insurer. The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given.

History: **En. Sec. 552, Ch. 286, L. 1959; R.C.M. 1947, 40-5015.**

33-5-403. Financial condition — method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than 90 days shall be allowed as assets.

(5) An assessment levied upon subscribers and not collected shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

History: **En. Sec. 553, Ch. 286, L. 1959; R.C.M. 1947, 40-5016.**

33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint.

(2) Except as to a nonassessable policy each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

History: **En. Sec. 556, Ch. 286, L. 1959; R.C.M. 1947, 40-5019.**

33-5-405. Subscribers' liability on judgment. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

History: En. Sec. 557, Ch. 286, L. 1959; R.C.M. 1947, 40-5020.

33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as stated in accordance with 33-5-404, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable.

History: En. Sec. 558, Ch. 286, L. 1959; R.C.M. 1947, 40-5021.

33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while his policy is in force or within 1 year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his policy is in force or within 1 year after its termination.

History: En. Sec. 559, Ch. 286, L. 1959; R.C.M. 1947, 40-5022.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-408. Aggregate liability. No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

History: En. Sec. 560, Ch. 286, L. 1959; R.C.M. 1947, 40-5023.

33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

History: En. Sec. 561, Ch. 286, L. 1959; R.C.M. 1947, 40-5024.

Cross-References

Contested case administrative hearings, 2-4-102.

Hearings by Commissioner, 33-1-313.

33-5-410. Distribution of savings. A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks or policies or between subscribers, but this shall not prevent retrospective rating, distribution on a retrospective plan, or distribution varying as to classes of subscribers based on the experience of such subscribers.

History: En. Sec. 562, Ch. 286, L. 1959; R.C.M. 1947, 40-5025.

33-5-411. Subscribers' share in assets. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in 33-5-402, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

History: En. Sec. 563, Ch. 286, L. 1959; R.C.M. 1947, 40-5026.

33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscriber for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation.

History: En. Sec. 565, Ch. 286, L. 1959; R.C.M. 1947, 40-5028.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-413. Annual statement. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

History: En. Sec. 551, Ch. 286, L. 1959; R.C.M. 1947, 40-5014.

Part 5
Insurance Operations

33-5-501. Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact.

History: En. Sec. 541, Ch. 286, L. 1959; R.C.M. 1947, 40-5004.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-5-502. Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

History: En. Sec. 546, Ch. 286, L. 1959; R.C.M. 1947, 40-5009.

Cross-References

Revocation or suspension of certificates of authority — generally, 33-2-118, 33-2-119.

33-5-503. Eligible subscribers — liability of representative. (1) Individuals, partnerships, and corporations of this state may make application, enter into agreement for, hold policies or contracts in or with, and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations.

(2) Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships, and corporations to the same extent that individuals, partnerships, and corporations are herein authorized to exchange reciprocal interinsurance contracts.

(3) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

History: En. Sec. 554, Ch. 286, L. 1959; R.C.M. 1947, 40-5017.

CHAPTER 6

BENEVOLENT ASSOCIATIONS

Part 1 — General Provisions

Section

33-6-101. Scope of chapter — provisions applicable.
33-6-102. Definitions.
33-6-103. New benevolent associations prohibited — foreign associations.
33-6-104. Amendments filed with commissioner.

Part 2 — Management

33-6-201. Officers — number — bond.

Part 3 — Finance

33-6-301. Receipts for payment to association.
33-6-302. Expenses — assessment for expenses — shown in annual statement.
33-6-303. Assessment for death benefit — notice — procedure.
33-6-304. Annual statement.

Part 4 — Insurance Operations

33-6-401. Annual license — fee — evidence.
33-6-402. Agents — license.
33-6-403. Officers as agents.
33-6-404. Minimum membership.
33-6-405. Payment of death claims.

Part 1

General Provisions

33-6-101. Scope of chapter — provisions applicable. (1) This chapter applies only to benevolent associations.

(2) No provisions of this code shall apply to any such association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, and 7 of chapter 1; 33-1-601 through 33-1-603; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; 33-2-804; chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; chapter 15; chapter 18; 33-22-304; and 33-22-506.

History: (1), (2)En. Sec. 521, Ch. 286, L. 1959; Sec. 40-4901, R.C.M. 1947; (3)En. Sec. 537, Ch. 286, L. 1959; amd. Sec. 1, Ch. 297, L. 1971; Sec. 40-4917, R.C.M. 1947; R.C.M. 1947, 40-4901, 40-4917; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (3).

Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-6-102. Definitions. (1) (a) Any corporation, association, or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members whereby, upon decease of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such corporation, association, or society to his legal representatives or to the beneficiary designated by him, which money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of them collected or to be collected from the members thereof or members of a class therein or interest or accretions thereon or accumulations thereof; and wherein the money or other benefit, charity, aid, or relief so realized is applied to or accumulated for the uses and purposes herein specified and/or the uses of such corporation, association, or society and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(b) The definition of benevolent association in subsection (1)(a) above is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (i) above; or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) A "member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members, whereby any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such association upon the decease of a member to his legal representatives or to the beneficiary or beneficiaries designated by him.

(b) There shall be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business thereof, whether designated as officers, trustees, comptrollers, managers, or by whatever name called.

History: (1)En. Sec. 522, Ch. 286, L. 1959; amd. Sec. 20, Ch. 535, L. 1975; Sec. 40-4902, R.C.M. 1947; (2) thru (4)En. Secs. 523, 524, 525, Ch. 286, L. 1959; Secs. 40-4903, 40-4904, 40-4905, R.C.M. 1947; R.C.M. 1947, 40-4902, 40-4903, 40-4904, 40-4905.

33-6-103. New benevolent associations prohibited — foreign associations. (1) No benevolent association shall transact or be authorized to transact any business in this state unless it lawfully had authority to transact such business as such an association immediately prior to January 1, 1961.

(2) No new benevolent association shall hereafter be organized or formed in this state.

(3) No association formed or existing under the laws of any other state or jurisdiction shall be authorized to transact business in this state.

History: En. Sec. 526, Ch. 286, L. 1959; R.C.M. 1947, 40-4906.

33-6-104. Amendments filed with commissioner. Each benevolent association shall promptly file with the commissioner a copy, certified to by its president and secretary, of each of the following:

(1) if incorporated, any amendment of articles of incorporation or of bylaws;

(2) if not incorporated, any amendment of articles of association, of agreement, or of rules or agreements with its members;

(3) any modification of its form of membership contracts.

History: En. Sec. 527, Ch. 286, L. 1959; R.C.M. 1947, 40-4907.

Part 2

Management

33-6-201. Officers — number — bond. (1) Each benevolent association shall be in the charge of its officers and shall not have more than five officers.

(2) The treasurer and any other officer having charge of any funds of a benevolent association shall each be bonded in the amount of $1,000, executed to the state of Montana, joint and several, for the use and benefit of the members or beneficiaries of such association. Each such bond shall be on file in the principal office and address of the association, and a certified copy thereof must be filed with the commissioner.

History: En. Sec. 528, Ch. 286, L. 1959; R.C.M. 1947, 40-4908.

Cross-References

Surety bonds — general provisions, Title 28, ch. 11, part 4; Title 33, ch. 26.

Part 3

Finance

33-6-301. Receipts for payment to association. Every benevolent association shall issue a receipt or other evidence of payment to each person making a payment of any kind to the association.

History: En. Sec. 531, Ch. 286, L. 1959; R.C.M. 1947, 40-4911.

33-6-302. Expenses — assessment for expenses — shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) 20% of the total amount received during such year, whether as assessments, dues, donations, or by whatever name called, except fees collected for new memberships; or

(b) $15 per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed $3 per calendar year, except that such assessment shall not exceed $4 per year where a membership certificate includes within its protection a family group consisting of two or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods or a combination of such methods.

History: **En. Sec. 533, Ch. 286, L. 1959; amd. Sec. 1, Ch. 224, L. 1975; R.C.M. 1947, 40-4913.**

33-6-303. Assessment for death benefit — notice — procedure. (1) Within 30 days after a benevolent association receives a completed proof of claim for death of a member, it must mail to each of its members in good standing an assessment notice stating:

(a) the name, date, and place of death of the deceased member;

(b) the number of the proof of death claim assigned thereto by the association;

(c) the amount of the assessment and the expiration date of the assessment payment; and

(d) the number of members in good standing to whom such notices are being sent, as computed from the last completed assessment.

(2) At the time of mailing the assessment notice required by (1) above, the association shall send a duplicate thereof to the commissioner for filing, together with information as to the mailing of the notice to members.

History: **En. Sec. 535, Ch. 286, L. 1959; R.C.M. 1947, 40-4915.**

33-6-304. Annual statement. (1) In addition to compliance with 33-2-701, the annual statement of a benevolent association shall exhibit the following items and facts:

(a) the name and business address of the association;

(b) the names and addresses of the officers of the association;

(c) the number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each subgroup or class, if any, of the association.

(d) the number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied, or resisted, and reasons therefor;

(e) the number of assessments in the association and in each subgroup or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members;

(f) the expenses actually incurred during the year; debts unpaid at the commencement of the year; debts and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense, and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association;

(g) whether the association has complied with all of the provisions of 33-6-302 and 33-6-405;

(h) the information required by 33-6-302.

(2) Two officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement.

(3) A copy of the annual statement certified by the commissioner must be filed before April 1 of each year by the association in the office of the county clerk of the county in which the business office of the association is located.

History: **En. Sec. 536, Ch. 286, L. 1959; R.C.M. 1947, 40-4916.**

Part 4

Insurance Operations

33-6-401. Annual license — fee — evidence. (1) The authority of such association may be renewed annually but in all cases to terminate on the succeeding June 1. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused.

(2) For each such license or renewal the association shall pay the commissioner $25.

(3) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: **En. 40-4918 by Sec. 2, Ch. 297, L. 1971; R.C.M. 1947, 40-4918(part).**

33-6-402. Agents — license. Agents for any benevolent association may be appointed in accordance with chapter 17 and shall be subject to the applicable provisions of such chapter, except as provided in 33-6-403. No such agent may be appointed if there are less than three officers in charge of the association.

History: **En. Sec. 529, Ch. 286, L. 1959; R.C.M. 1947, 40-4909; amd. Sec. 146, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted brackets around "chapter" before "except".

33-6-403. Officers as agents. Not exceeding five officers of any benevolent association may act for the association without obtaining a license as an agent. Such officers shall be subject to the jurisdiction of the commissioner in the same manner as though they were licensed as agents under chapter 17.

History: **En. Sec. 530, Ch. 286, L. 1959; R.C.M. 1947, 40-4910.**

33-6-404. Minimum membership. Each benevolent association shall have at all times not less than 200 members in good standing.

History: **En. Sec. 532, Ch. 286, L. 1959; R.C.M. 1947, 40-4912.**

33-6-405. Payment of death claims. (1) Each completed proof of claim for death of a member of a benevolent association shall be assigned a number by the association in consecutive order of receipt for each calendar year.

(2) Payment in full on final settlement of death benefits shall be made by the association to the legal heir or heirs or the designated beneficiary or beneficiaries within 20 days after the expiration date stated in the association's notice referred to in 33-6-303(1)(c).

History: **En. Sec. 534, Ch. 286, L. 1959; R.C.M. 1947, 40-4914.**

CHAPTER 7

FRATERNAL BENEFIT SOCIETIES

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Section

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33-7-527 through 33-7-530. Repealed.

Chapter Cross-References

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Part 1

General Provisions

33-7-101. Scope of chapter — provisions applicable. (1) Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. No law hereafter enacted shall apply to them unless they be expressly designated therein.

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to fraternal benefit societies to the

extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; and chapter 18.

History: En. Secs. 617, 672, Ch. 286, L. 1959; R.C.M. 1947, 40-5304, 40-5359; amd. Sec. 141, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "part 13" for "part 9" in (2).

33-7-102. Fraternal benefit societies defined. (1) Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of 33-7-104(1)(b) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

(2) When used in this chapter the word "society", unless otherwise indicated, means fraternal benefit society.

(3) A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated, or admitted in accordance with its constitution, laws, ritual, and rules, which subordinate lodges or branches are required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

(4) A society shall be deemed to have a representative form of government when:

(a) it provides in its constitution or laws for a supreme legislative or governing body composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

(b) the representatives elected constitute a majority in number and have not less than two-thirds of the votes or less than the votes required to amend its constitution and laws;

(c) the meetings of the supreme legislative or governing body and the election of officers, representatives, or delegates are held as often as once in 4 calendar years;

(d) the society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

(e) such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(f) the officers are elected either by the supreme legislative or governing body or by the board of directors; and

(g) the members, officers, representatives, or delegates shall not vote by proxy.

History: (1), (2)En. Sec. 614, Ch. 286, L. 1959; Sec. 40-5301, R.C.M. 1947; (3)En. Sec. 615, Ch. 286, L. 1959; Sec. 40-5302, R.C.M. 1947; (4)En. Sec. 616, Ch. 286, L. 1959; Sec. 40-5303, R.C.M. 1947; R.C.M. 1947, 40-5301, 40-5302, 40-5303.

33-7-103. Definition of premiums. As used in this chapter, "premiums" means premiums, rates, or other required contributions by whatever name known.

History: En. Sec. 645, Ch. 286, L. 1959; R.C.M. 1947, 40-5332.

33-7-104. Exempted and partially exempted societies — restrictions. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the auxiliaries to such orders, societies, or associations;

(c) domestic societies which limit their membership to employees of a particular city or town, designated firm, business house, or corporation which provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any one year, or both; or

(d) domestic societies or associations of a purely religious, charitable, or benevolent description which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to any one person in any one year, or both.

(2) Any such society or association described in (c) or (d) of subsection (1) above which provides for death or disability benefits for which benefit certificates are issued and any such society or association included in (1)(d) which has more than 1,000 members shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in (1)(b) above, shall give or allow or promise to give or allow to any person any compensation for procuring new members.

(4) Every society which provides for benefits in case of death or disability resulting solely from accident and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability shall not apply to such society.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

(6) Societies exempted under the provisions of this section shall also be exempt from all other provisions of the insurance laws of this state.

History: En. Sec. 618, Ch. 286, L. 1959; amd. Sec. 21, Ch. 535, L. 1975; R.C.M. 1947, 40-5305.

33-7-105 through 33-7-110 reserved.

33-7-111. Examination of domestic societies — report. (1) The commissioner or any person he may appoint shall have the power of visitation and examination into the affairs of any domestic society, and he shall make such examination at least once in every 3 years. He may employ assistants for the purpose of such examination, and he or any person he may appoint shall have free access to all books, papers, and documents that relate to the business of the society.

(2) In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

(3) A summary of the report of the commissioner and such recommendations or statements of the commissioner as may accompany such report shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations, and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body.

(4) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

History: En. Sec. 653, Ch. 286, L. 1959; R.C.M. 1947, 40-5340.

33-7-112. Examination of foreign and alien societies. (1) The commissioner or any person whom he may appoint may examine any foreign or alien society transacting or applying for admission to transact business in this state. He may employ assistants, and he or any person he may appoint shall have free access to all books, papers, and documents that relate to the business of the society.

(2) He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province, or country where such society is organized.

(3) The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

History: En. Sec. 654, Ch. 286, L. 1959; R.C.M. 1947, 40-5341.

33-7-113. No adverse publications. Pending, during, or after an examination or investigation of a society, either domestic, foreign, or alien, the commissioner shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any society until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report, or finding and to make such showing in connection therewith as it may desire.

History: **En. Sec. 655, Ch. 286, L. 1959; R.C.M. 1947, 40-5342.**

33-7-114. Service of process. (1) Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(2) Service shall only be made upon the commissioner or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered or certified mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

History: **En. Sec. 665, Ch. 286, L. 1959; R.C.M. 1947, 40-5352.**

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Answer to pleadings, Rule 12(a), M.R.Civ.P. (see Title 25, ch. 20).

33-7-115. Violation of standards of conduct — injunction — liquidation — receivership. (1) The commissioner shall notify the society of his findings, state in writing the reasons for his dissatisfaction, and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected or why an action in quo warranto should not be commenced against the society when he upon investigation finds that a domestic society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of this chapter;

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the attorney general who shall, if he deems the circumstances warrant, commence

an action to enjoin the society from transacting business or in quo warranto. No application or petition for injunction against any domestic, foreign, or alien society or branch thereof shall be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

(3) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

(4) No society so enjoined shall have the authority to do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of such action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the society's license.

(5) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(6) No action under this section shall be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership shall be applicable to a society which voluntarily determines to discontinue business.

History: Ap. p. Sec. 669, Ch. 286, L. 1959; Sec. 40-5356, R.C.M. 1947; Ap. p. Sec. 670, Ch. 286, L. 1959; Sec. 40-5357, R.C.M. 1947; R.C.M. 1947, 40-5356, 40-5357.

Cross-References

Attorney General — powers and duties, 2-15-501.

Injunctions, Title 27, ch. 19.

Quo warranto, Title 27, ch. 28.

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-7-116. Review. All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review by the court in accordance with the provisions of 33-1-711.

History: En. Sec. 671, Ch. 286, L. 1959; R.C.M. 1947, 40-5358.

Part 2

Formation

33-7-201. Organization — incorporation. The organization of a society shall be governed as follows: seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) the proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised (such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, or religious advantages may be set forth among the purposes of the society); and

(3) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than 1 year from the date of the issuance of the permanent certificate.

History: **En. Sec. 622, Ch. 286, L. 1959; R.C.M. 1947, 40-5309.**

Cross-References

Acknowledgment, Title 1, ch. 5.

33-7-202. Filing articles and documents — bond — preliminary certificate. (1) Such articles of incorporation, duly certified copies of the constitution, laws, and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year shall be filed with the commissioner, who may require such further information as he deems necessary.

(2) The bond with sureties approved by the commissioner shall be in such amount, not less than $5,000 or more than $25,000, as required by the commissioner. All documents filed are to be in the English language.

(3) If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

History: **En. Sec. 623, Ch. 286, L. 1959; R.C.M. 1947, 40-5310.**

Cross-References

Sureties, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-7-203. Time for completing organization. No preliminary certificate granted under the provisions of this section shall be valid after 1 year from its date or after such further period, not exceeding 1 year, as may be authorized by the commissioner upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in 1 year from the date of the preliminary certificate or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

History: **En. Sec. 624, Ch. 286, L. 1959; R.C.M. 1947, 40-5311.**

33-7-204. Initial solicitations — qualifications. (1) Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected.

(2) No society shall incur any liability other than for the return of such advance premium or issue any certificate or pay, allow, or offer or promise to pay or allow any death or disability benefit to any person until:

(a) actual bona fide applications for death benefits have been secured aggregating at least $500,000 on not less than 500 lives;

(b) all such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(c) certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(d) ten subordinate lodges or branches have been established into which the 500 applicants have been admitted;

(e) there has been submitted to the commissioner, under oath of the president or secretary or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(f) it shall have been shown to the commissioner, by sworn statement of the treasurer or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least $2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Such advance premiums shall be held in trust during the period of organization, and if the society has not qualified for a certificate of authority within 1 year, as herein provided, the premiums shall be returned to the applicants.

History: En. Sec. 625, Ch. 286, L. 1959; R.C.M. 1947, 40-5312.

33-7-205. Certificate of compliance — certified copy as evidence. The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

History: En. Sec. 626, Ch. 286, L. 1959; R.C.M. 1947, 40-5313.

Cross-References

Official documentary evidence, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

33-7-206. Incorporation and continuation of voluntary associations. (1) After January 1, 1962, no unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

(2) Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims, or contracts.

History: En. Sec. 629, Ch. 286, L. 1959; R.C.M. 1947, 40-5316(part).

Cross-References

Incorporation, Title 35, ch. 1, part 2.

33-7-207. Corporate powers retained. Any incorporated society authorized to transact business in this state on January 1, 1961, may thereafter exercise all the rights, powers, and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

History: En. Sec. 628, Ch. 286, L. 1959; R.C.M. 1947, 40-5315.

33-7-208 through 33-7-210 reserved.

33-7-211. Consolidations and mergers. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31 next preceding the date of the contract;

(c) a certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

(d) evidence that at least 60 days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

(2) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(3) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any

other state. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state and a certificate of such approval filed with the commissioner or, if the laws of such state contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state and a certificate of such approval filed with the commissioner.

History: En. Sec. 666, Ch. 286, L. 1959; R.C.M. 1947, 40-5353.

Cross-References

Hearings by Commissioner, 33-1-701.

33-7-212. Consolidations and mergers — effect. Upon the consolidation or merger becoming effective as provided in 33-7-211, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

History: En. Sec. 667, Ch. 286, L. 1959; R.C.M. 1947, 40-5354.

33-7-213. Conversion into mutual life insurer. Any domestic fraternal benefit society may be converted and licensed as a mutual life insurer by compliance with the applicable requirements of chapter 3 of this title if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit the plan to the supreme legislative or governing body of such society at any regular or special meeting thereof by giving a full, true, and complete copy of the plan with the notice of such meeting. The notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two-thirds of all members of such body shall be necessary for the approval of the agreement. No such conversion shall take effect unless and until approved by the commissioner, who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

History: En. Sec. 668, Ch. 286, L. 1959; R.C.M. 1947, 40-5355.

Cross-References

Hearings by Commissioner, 33-1-701.

Part 3

Management

33-7-301. Constitution and laws — general powers. (1) Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change, alter, add to, or amend such constitution and laws.

(2) A society shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

History: **En. Sec. 627, Ch. 286, L. 1959; R.C.M. 1947, 40-5314.**

33-7-302. Amendment of articles of incorporation, constitution, or laws — synopsis to members — certified copies as evidence. (1) A domestic society may amend its articles of incorporation, constitution, or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution, or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution, or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

(2) No amendment to the articles of incorporation, constitution, or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves the amendment, the reasons therefor shall be stated in the written notice.

(3) Within 90 days from the approval thereof by the commissioner, all such amendments or a synopsis thereof shall be furnished by the society to all members either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof have been furnished the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of or additions to its articles of incorporation, constitution, or laws within 90 days after the enactment of same.

(5) Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

History: **En. Sec. 630, Ch. 286, L. 1959; R.C.M. 1947, 40-5317.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-7-303. No waiver provision. The constitution and laws of the society may provide that no subordinate body or any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

History: **En. Sec. 631, Ch. 286, L. 1959; R.C.M. 1947, 40-5318.**

33-7-304. Location of office — place of meeting — records in English language. (1) The principal office of any domestic society shall be located in this state. The meetings of its supreme legislative or governing body may be held in any state, district, province, or territory wherein such society has at least five subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

(2) The minutes of the proceedings of the supreme or governing body and of the board of directors or corresponding body of a society shall be in the English language.

History: **En. Sec. 632, Ch. 286, L. 1959; R.C.M. 1947, 40-5319.**

33-7-305. Society operated institutions — funeral homes prohibited. (1) It shall be lawful for a society to create, maintain, and operate charitable, benevolent, or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold, or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

(2) Maintenance, treatment, and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement.

(3) No society shall own or operate funeral homes or undertaking establishments.

History: **En. Sec. 633, Ch. 286, L. 1959; R.C.M. 1947, 40-5320.**

Part 4

Finance

33-7-401. Member's share of deficiency. A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board and that if the payment be not made it shall stand as an indebtedness against the member's certificate and draw interest not to exceed 5% per annum compounded annually.

History: **En. Sec. 635, Ch. 286, L. 1959; R.C.M. 1947, 40-5322.**

33-7-402. Assets held for society — use — assets set aside for purpose. (1) All assets shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(3) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after January 1, 1962, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

History: En. Sec. 648, Ch. 286, L. 1959; R.C.M. 1947, 40-5335.

33-7-403. Investments. A society shall invest its funds only in such investments as are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated shall be held to meet the requirements of this section for the investment of funds.

History: En. Sec. 649, Ch. 286, L. 1959; R.C.M. 1947, 40-5336.

33-7-404. Annual statement — financial condition. (1) Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

(2) Every society transacting business in this state shall annually, on or before March 1, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of $25 for filing same. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(3) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

History: En. Sec. 650, Ch. 286, L. 1959; R.C.M. 1947, 40-5337.

33-7-405. Reserve valuation. (1) As a part of the annual statement required under 33-7-404, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided, the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months.

(2) Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to January 1, 1962, shall be determined in accordance with the provisions of law applicable prior to January 1, 1961, and as to certificates issued on or after January 1, 1962, shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(3) Reserves according to the commissioners' reserve valuation method for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) a net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such certificate; and

(b) a net 1-year term premium for such benefits provided for in the first certificate year.

(4) Reserves according to the commissioners' reserve valuation method for life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, annuity and pure endowment benefits, disability and accidental death benefits in all certificates and contracts, and all other benefits except life insurance and endowment benefits shall be calculated by a method consistent with the principles of subsection (3) above.

(5) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be

computed upon mortality and interest standards prescribed in subsections (7) and (8) below.

(6) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(7) The minimum standards of valuation for certificates issued prior to January 1, 1962, shall be those provided by the law applicable immediately prior to January 1, 1961, but not lower than the standards used in the calculating of rates for such certificates.

(8) The minimum standard of valuation for certificates issued after January 1, 1962, shall be 3 ½% interest and the following tables (except that a society may value its certificates in accordance with valuation standards authorized by the laws of this state for the valuation of policies issued by life insurance companies):

(a) for certificates of life insurance, American men ultimate table of mortality, with Bowerman's or Davis' extension thereof; or with the consent of the commissioner, the commissioner's 1941 standard ordinary mortality table or the commissioner's 1941 standard industrial table of mortality;

(b) for annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates, the 1937 standard annuity table;

(c) for disability benefits issued in connection with life benefit certificates, Hunter's disability table, which, for active lives, shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as class III disability table (1926) modified to conform to the contractual waiting period shall be used in computing reserves for disability benefits under a contract which presumes that total disability shall be considered to be permanent after a specified period;

(d) for accidental death benefits issued in connection with life benefit certificates, the intercompany double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) for noncancelable accident and health benefits, the class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

(9) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extrahazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

(10) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in

excess of the reserves required hereunder, but the contractual rights of any insured member shall not be affected thereby.

History: **En. Sec. 651, Ch. 286, L. 1959; R.C.M. 1947, 40-5338; amd. Sec. 13, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Added the parenthetical phrase after "the following tables" in (8).

Cross-References

Valuation of policies issued by life insurance companies, Title 33, ch. 20, part 2.

33-7-406. Annual statement — penalty for failure to file or to comply. A society neglecting to file the annual statement in the form and within the time provided in this part shall forfeit $100 for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this state shall cease while such default continues.

History: **En. Sec. 652, Ch. 286, L. 1959; R.C.M. 1947, 40-5339.**

33-7-407. Taxes. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate and office equipment.

History: **En. Sec. 656, Ch. 286, L. 1959; R.C.M. 1947, 40-5343.**

Cross-References

Property taxation, Title 15, ch. 6.

Part 5

Insurance Operations

33-7-501. Annual license — fee — evidence. (1) The authority of all societies licensed may be renewed annually but in all cases to terminate on the succeeding June 1. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused.

(2) For each such license or renewal the society shall pay the commissioner $10.

(3) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

History: **En. Sec. 619, Ch. 286, L. 1959; R.C.M. 1947, 40-5306(part).**

33-7-502. Foreign or alien society — qualifications. (1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any such society may be licensed to transact business in this state upon a showing that its assets are invested in accordance with the provisions of this chapter and upon filing with the commissioner:

(a) a duly certified copy of its charter or articles of incorporation;

(b) a copy of its constitution and laws, certified by its secretary or corresponding officer;

(c) a power of attorney to the commissioner as prescribed in 33-7-114;

(d) a statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

(e) a certificate from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;

(f) copies of its certificate forms; and

(g) such other information as he may deem necessary.

(2) Any foreign or alien society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter.

History: **En. Sec. 620, Ch. 286, L. 1959; R.C.M. 1947, 40-5307.**

33-7-503. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner shall notify the society of his findings when upon investigation he finds that a foreign or alien society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public.

(2) He shall state in writing the reasons for his dissatisfaction and require the society to show cause on a date named why its license should not be suspended, revoked, or refused.

(3) If on such date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, he may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this state.

(4) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

History: **En. Sec. 621, Ch. 286, L. 1959; R.C.M. 1947, 40-5308.**

Cross-References

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

33-7-504. Qualifications for membership — member bound to terms — general members. (1) A society may admit to benefit membership any person not less than 15 years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society.

(2) Any person admitted prior to attaining the full age of 18 years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application.

(3) A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: **En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).**

33-7-505. Benefit increase — evidence of insurability. Any member who shall apply for additional benefits more than 6 months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

History: En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-506. Benefits. (1) A society authorized to do business in this state may provide for the payment of:

(a) death benefits in any form;

(b) endowment benefits;

(c) annuity benefits;

(d) temporary or permanent disability benefits as a result of disease or accident;

(e) hospital, medical, or nursing benefits due to sickness or bodily infirmity or accident; and

(f) monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of $300.

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of a member's family, including the member, the member's spouse, and minor children, in the same or separate certificates.

History: En. Sec. 636, Ch. 286, L. 1959; R.C.M. 1947, 40-5323.

33-7-507. Benefits on lives of children — requisites. A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than 18 years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of 33-7-506. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

History: En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(1).

33-7-508. Change of beneficiaries. A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith.

History: En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(2).

33-7-509. Nonforfeiture benefits, cash surrender values, certificate loans, and other options — value — term. (1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans, and such other options as its laws may permit. As to certificates issued on and after January 1, 1961, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

(2) In the case of certificates other than those for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the 1941

standard industrial table, or any more recent table made applicable to life insurance companies, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) the reserve under the certificate determined on the basis specified in the certificates; and

(b) the sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrendered charge equal to 2 ½% of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American men ultimate table of mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130% of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the 1941 standard industrial table, or any more recent table made applicable to life insurance companies, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

History: En. Sec. 638, Ch. 286, L. 1959; R.C.M. 1947, 40-5325; amd. Sec. 14, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or any more recent table made applicable to life insurance companies" after "the 1941 standard industrial table" in (2) and (4).

Cross-References

Standard Nonforfeiture Law for Life Insurance, Title 33, ch. 20, part 2.

33-7-510. Beneficiaries — funeral benefits. (1) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws, or rules of the society. Every society by its constitution, laws, or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, but the portion so paid shall not exceed the sum of $500.

(3) If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits are payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

History: En. Sec. 639, Ch. 286, L. 1959; R.C.M. 1947, 40-5326.

Cross-References

Personal representative, Title 72, ch. 3, part 6.

33-7-511. Benefits not attachable. No money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment by the society.

History: **En. Sec. 640, Ch. 286, L. 1959; R.C.M. 1947, 40-5327.**

33-7-512. Officers not personally liable. The officers and members of the supreme, grand, or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

History: **En. Sec. 641, Ch. 286, L. 1959; R.C.M. 1947, 40-5328.**

33-7-513. Agreements as to benefits. (1) Every society authorized to do business in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

(2) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

(3) Any changes, additions, or amendments to the charter or articles of incorporation, constitution, or laws duly made or enacted subsequent to the issuance of the certificate shall bind the member and the beneficiaries and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

(4) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

History: **En. Sec. 642, Ch. 286, L. 1959; R.C.M. 1947, 40-5329.**

Cross-References

Evidence of public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Representations, 33-15-403.

33-7-514. Standard provisions. (1) After January 1, 1962, no life benefit certificate may be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner.

(2) The certificate must contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(a) title on the face and filing page of the certificate clearly and correctly describing its form;

(b) a provision stating the amount of rates, premiums, or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(c) a provision that the member is entitled to a grace period of not less than a full month (or 30 days at the option of the society) in which the payment of any premium after the first may be made. During such grace period the certificate must continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate.

(d) a provision that the member is entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value, or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6% per annum compounded annually;

(e) except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member so elects prior to the expiration of the grace period of any overdue premium, that default may not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate.

(f) a provision that one paid-up nonforfeiture benefit as specified in the certificate must become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

(g) a statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate and a brief general statement of the method used in calculating such benefits;

(h) a table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate, whichever is shorter;

(i) a provision that the certificate is incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service, and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means may also be excepted. The certificate is incontestable on the grounds of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society has the right to contest a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided.

(j) a provision that in case the age of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age; but if the correct age was not an insurable age under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(k) a provision or provisions which recite fully or which set forth the substance of all sections of the charter, constitution, laws, or rules of the society in force at the time of issuance of the certificate, the violation of which will result in the termination of or in the reduction of the benefit or benefits payable under the certificate; and

(l) if the constitution or laws of the society provide for expulsion or suspension of a member, a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership, shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

History: En. Sec. 643, Ch. 286, L. 1959; R.C.M. 1947, 40-5330; amd. Sec. 16, Ch. 198, L. 1979.

Cross-References

Policy forms to be approved by Commissioner, Title 33, ch. 1, part 5.

33-7-515. Prohibited provisions. After January 1, 1962, no life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) any provision limiting the time within which any action at law or in equity may be commenced to less than 2 years after the cause of action accrues;

(2) any provision by which the certificate purports to be issued or to take effect more than 6 months before the original application for the certificate was made, except in case of transfer from one form of certificate to another

in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

History: **En. Sec. 644, Ch. 286, L. 1959; R.C.M. 1947, 40-5331.**

33-7-516. Accident and health insurance and total and permanent disability insurance certificates — filing and approval. (1) No domestic, foreign, or alien society authorized to do business in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner.

(2) The commissioner shall have power, from time to time, to make, alter, and supersede reasonable regulations prescribing the required, optional, and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of parts 1 through 4 of chapter 22. Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of parts 1 through 4 of chapter 22, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member.

(3) Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of such filing.

History: **En. Sec. 646, Ch. 286, L. 1959; R.C.M. 1947, 40-5333.**

Cross-References

Promulgation of rules by Commissioner, Title 2, ch. 4, part 3; 33-1-313.

Hearings by Commissioner, 33-1-701.

33-7-517. Reinsurance — credit for reserves. (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state or, if not so authorized, one which is approved by the commissioner; but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner.

(2) It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1961, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

History: **En. Sec. 647, Ch. 286, L. 1959; R.C.M. 1947, 40-5334.**

Cross-References

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-7-518. Misrepresentation — penalty. (1) No person shall cause or permit to be made, issued, or circulated in any form:

(a) any misrepresentation or false or misleading statement concerning the terms, benefits, or advantages of any fraternal insurance contract now issued or to be issued in this state or the financial condition of any society;

(b) any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

(c) any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture, or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it:

(i) does not compare in detail:

(A) the gross rates and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

(B) any increase in cash values and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or

(ii) omits from consideration:

(A) any benefit or value provided in the contract;

(B) any differences as to amount or period of rates; or

(C) any differences in limitations or conditions or provisions which directly or indirectly affect the benefits.

(2) In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

(3) Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation shall upon conviction be punished by a fine not less than $100 or more than $1,000 or by imprisonment in the county jail not less than 30 days or more than 90 days or both fine and imprisonment and shall in addition be liable for civil penalty in the amount of three times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

History: En. Sec. 663, Ch. 286, L. 1959; R.C.M. 1947, 40-5350.

Cross-References

Civil actions, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

Unfair trade practices, Title 33, ch. 18.

33-7-519. Discrimination and rebates. (1) No society doing business in this state shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes.

(2) No society, by itself or any other party and no agent or solicitor, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any valuable consideration or inducement to or for insurance on any risk authorized to be taken by such society which is not specified in the certificate. No member shall receive or accept, directly or

indirectly, any rebate of premium or part thereof or agent's or solicitor's commission thereon payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on or any valuable consideration or inducement not specified in the contract of insurance.

History: **En. Sec. 664, Ch. 286, L. 1959; R.C.M. 1947, 40-5351.**

33-7-520 through 33-7-524 reserved.

33-7-525. Agent defined. The term "insurance agent" as used in this chapter means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident and health insurance, or annuity contract. The term "insurance agent" does not include any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

History: **En. Sec. 657, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(2); amd. Sec. 15, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted former subsection (2) relating to the exclusion of a person devoting less than 50% of his time soliciting contracts from the definition of "insurance agent"; made minor changes in phraseology.

33-7-526. Agent license required — penalty. (1) Agents of societies shall be considered to be insurance agents and subject to the same licensing requirements as insurance agents under chapter 17 of this code, except that no examination is required of an individual lawfully licensed in this state as an agent for a fraternal benefit society as to the kind of insurance to be transacted as of or immediately prior to October 1, 1981, and thereafter continuing to be so licensed.

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract, except to a licensed insurance agent of such society.

(3) Any person who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall be guilty of a misdemeanor.

History: **En. Secs. 657, 658, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(1), 40-5345; amd. Sec. 16, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted subsection (1) for "Agents of societies shall be licensed in accordance with the provisions of 33-7-525 through 33-7-528"; deleted "and except an agent exempted under 33-7-525" from the end of (2); deleted "except as provided in 33-7-525" after "shall" near the end of (3).

33-7-527 through 33-7-530. Repealed. Sec. 29, Ch. 303, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

33-7-527. En. Sec. 659, Ch. 286, L. 1959; R.C.M. 1947, 40-5346.

33-7-528. En. Sec. 660, Ch. 286, L. 1959; R.C.M. 1947, 40-5347.

33-7-529. En. Sec. 662, Ch. 286, L. 1959; R.C.M. 1947, 40-5349.

33-7-530. En. Sec. 661, Ch. 286, L. 1959; R.C.M. 1947, 40-5348.

CHAPTER 8

JOINT UNDERWRITING ASSOCIATIONS

Part 1 — Medical Liability

Section
33-8-101 through 33-8-114. Terminated.
33-8-115. Purpose.
33-8-116. Definitions.
33-8-117. Joint underwriting association.
33-8-118. Procedures.
33-8-119. Participation.
33-8-120. Directors.
33-8-121. Appeals and judicial review.
33-8-122. Privileged communications.
33-8-123. Annual statements.
33-8-124. Examination of association's affairs.

Chapter Compiler's Comments

Reenactment of Terminated Sections: Chapter 301, L. 1985 (enacting 33-8-115 through 33-8-124), is a reenactment of former sections 33-8-101 through 33-8-114, which were terminated by sec. 1, Ch. 134, L. 1979. Chapter 301, L. 1985, is scheduled to terminate October 1, 1987, pursuant to sec. 11, Ch. 301, L. 1985.

Part 1

Medical Liability

33-8-101 through 33-8-114. Terminated. Sec. 1, Ch. 134, L. 1979.

Compiler's Comments

Histories of Terminated Sections: **33-8-101 through 33-8-114.** En. 40-6001 thru 40-6010 by Secs. 1 thru 10, Ch. 246, L. 1977; R.C.M. 1947, 40-6001 thru 40-6010.

33-8-115. *(Temporary)* **Purpose.** The legislature finds that an emergency situation exists because of the high cost and impending unavailability of medical liability insurance. The purpose of this chapter is to provide an interim solution to the unavailability of such insurance, if such insurance becomes unavailable prior to the next session of the legislature. Accordingly, this chapter is enacted for a limited period of time. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 1, Ch. 301, L. 1985.

33-8-116. *(Temporary)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Association" means the joint underwriting association established pursuant to the provisions of this chapter.

(2) "Medical liability insurance" means insurance coverage against legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence in rendering professional service by a licensed physician or a hospital, health care facility, or long-term care facility, as defined by 50-5-101.

(3) "Net direct premiums" means gross direct premiums on personal injury liability insurance written pursuant to the provisions of the insurance

laws of Montana, including the liability component of multiple peril package policies as computed by the commissioner of insurance, less return premiums or the unused or unabsorbed portions of premium deposits. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 2, Ch. 301, L. 1985.

33-8-117. *(Temporary)* **Joint underwriting association.** (1) A joint underwriting association is created, consisting of all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of this title, including insurers covering the perils in multiple peril package policies. Each of these insurers shall remain a member of the association as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

(3) The association may not commence underwriting operations for hospitals, health care facilities, or long-term care facilities until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, health care facilities, or long-term care facilities, but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.

(4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, health care facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the voluntary market.

(5) The association has, pursuant to the provisions of this chapter and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:

(a) subject to limits as specified in the plan of operation but not to exceed $1,000,000 for each claimant under one policy and $3,000,000 for all claimants under one policy in any one year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;

(b) underwrite the insurance and assume reinsurance from its members; and

(c) cede reinsurance.

(6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this chapter to be fully effective and operative upon order of the commissioner of insurance.

(b) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(c) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.

(d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or must be made if directed by the commissioner. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 3, Ch. 301, L. 1985.

33-8-118. *(Temporary)* **Procedures.** (1) (a) On or after the effective date of the plan of operation, a licensed physician or hospital, health care facility, or long-term care facility is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of 1 year.

(2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner of insurance may require.

(b) Within such time as the commissioner of insurance directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association. If the commissioner disapproves the initial filing, in whole or in part, the association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to approve the filing or amended filing within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

(c) Any deficit sustained by the association in any one year must be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

(i) an assessment upon the policyholders; or

(ii) a rate increase applicable prospectively.

(d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase must be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant premium rates must be on an actuarially sound basis and must be calculated to be self-supporting.

(e) If sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d), all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in this section. Contributions must be reimbursed to the members following recoupment as provided in subsection (2)(d).

(f) The commissioner of insurance shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies must be at rates established on an actuarially sound basis and which are calculated to be self-supporting. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 4, Ch. 301, L. 1985.

33-8-119. *(Temporary)* **Participation.** All insurers that are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association must be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner of insurance. No member is obligated in any one year to reimburse the association on account of the member's proportionate share in the deficit from operations of the association in that year in excess of 1% of the member's surplus to policyholders, and the aggregate amount not so reimbursed must be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section, after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. If the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit must be allocated to each member in accordance with the method of determining participation prescribed in this section. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 5, Ch. 301, L. 1985.

33-8-120. *(Temporary)* **Directors.** The association must be governed by a board of directors, to be elected annually. Eight directors must be elected by cumulative voting of members of the association, whose votes must be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors must be appointed by the commissioner of insurance as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association must be elected at a meeting of the members held at a time and place designated by the commissioner. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 6, Ch. 301, L. 1985.

33-8-121. *(Temporary)* **Appeals and judicial review.** (1) With respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this chapter, his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling, action, or decision by or on behalf of the association.

(2) All orders of the commissioner of insurance made pursuant to this chapter are subject to judicial review as provided in this title. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 7, Ch. 301, L. 1985.

33-8-122. *(Temporary)* **Privileged communications.** There is no liability on the part of and no cause of action of any nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representative for any statement made in good faith by them in any report or communication concerning risks insured or to be insured by the association or at any administrative hearing conducted in connection therewith. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 8, Ch. 301, L. 1985.

33-8-123. *(Temporary)* **Annual statements.** The association shall file in the office of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement must contain the matters and information prescribed and must be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information with respect to its transactions, conditions, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 9, Ch. 301, L. 1985.

33-8-124. *(Temporary)* **Examination of association's affairs.** The commissioner of insurance shall make an examination into the affairs of the association at least annually. The examination must be conducted and the report thereon filed in the manner provided by law. The expenses of every examination must be borne and paid by the association in the manner prescribed by law. *(Terminates October 1, 1987—sec. 11, Ch. 301, L. 1985.)*

History: En. Sec. 10, Ch. 301, L. 1985.

CHAPTER 9

PROFESSIONAL LIABILITY INSURANCE

Part 1 — General Provisions

Section

33-9-101. Definitions.
33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers.
33-9-103. Incorporation and regulation.
33-9-104. Initial qualifications.
33-9-105. Foreign or alien insurers — certification.

Part 1

General Provisions

33-9-101. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(2) "Other professional" means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

History: En. 40-4759 by Sec. 1, Ch. 119, L. 1977; R.C.M. 1947, 40-4759(intro.), (2), (3).

33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting himself by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

History: En. 40-4760 by Sec. 2, Ch. 119, L. 1977; R.C.M. 1947, 40-4760.

33-9-103. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 33-9-102, shall organize under the provisions of Title 33 and be regulated as therein provided. The provisions of this part govern whenever in conflict with other laws or parts of laws of any state.

History: **En. 40-4761 by Sec. 3, Ch. 119, L. 1977; R.C.M. 1947, 40-4761.**

Cross-References

Formation of domestic mutual or stock insurers, Title 33, ch. 3, part 2.

Formation of reciprocal insurer, Title 33, ch. 5, part 2.

33-9-104. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

History: **En. 40-4762 by Sec. 4, Ch. 119, L. 1977; R.C.M. 1947, 40-4762.**

Cross-References

Original certificate of authority — general requirements, 33-2-115.

33-9-105. Foreign or alien insurers — certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this part for the purpose of transacting the kind of business described in this part may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

History: **En. 40-4763 by Sec. 5, Ch. 119, L. 1977; R.C.M. 1947, 40-4763.**

CHAPTER 10

INSURANCE GUARANTY ASSOCIATIONS

Part 1 — Casualty and Property Insurance Guaranty Associations

Section

33-10-101. Short title, purpose, scope, and construction.
33-10-102. Definitions.
33-10-103. Creation of the association.
33-10-104. Board of directors — commissioner approval — compensation.
33-10-105. General powers and duties.
33-10-106. Plan of operation — delegation to other organization.
33-10-107. Tax exemption.
33-10-108. Prevention of insolvencies — directors' and commissioner's action.
33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner.
33-10-110. Immunity.
33-10-111. Stay of proceedings — reopening of default judgments.
33-10-112. Examination of association.
33-10-113. Claims — notice.
33-10-114. Claims — effect as to insured and receiver.

33-10-115. Recovery — sequence — nonduplication.
33-10-116. Assessment.
33-10-117. Recognition of assessments in rates.

Part 2 — Life and Health Insurance Guaranty Associations

33-10-201. Short title, purpose, scope, and construction.
33-10-202. Definitions.
33-10-203. Creation of the association — accounts — supervision by commissioner.
33-10-204. Board of directors — commissioner approval — compensation.
33-10-205. General powers of association — standing.
33-10-206. Records of meetings and negotiations.
33-10-207. Immunity.
33-10-208. Tax exemptions.
33-10-209. Examination of the association — annual report.
33-10-210. Unfair trade practice.
33-10-211 through 33-10-214 reserved.
33-10-215. Duties and powers of the commissioner.
33-10-216. Plan of operation — delegation of powers provision.
33-10-217. Prevention of impairments.
33-10-218. Examination by commissioner — cost.
33-10-219. Impaired insurer — association's powers prior to liquidation.
33-10-220. Impaired insurer — association's powers during liquidation.
33-10-221. Nomination of liquidator by association — notification given by liquidator.
33-10-222. Stay of proceedings — reopening default judgments.
33-10-223. Assignment by beneficiaries — subrogation.
33-10-224. Extent of liability.
33-10-225. Association as creditor — use of assets.
33-10-226. Distribution of ownership rights — distribution to shareholders.
33-10-227. Assessments — abatement — basis for ratesetting.
33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.
33-10-229. Recovery of dividends.
33-10-230. Tax — writeoffs of certificates of contribution.

Part 1

Casualty and Property Insurance Guaranty Associations

Part Cross-References

Insurer supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

33-10-101. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.

History: En. Secs. 1, 2, 3, 4, Ch. 63, L. 1971; R.C.M. 1947, 40-5701, 40-5702, 40-5703, 40-5704.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) "Covered claim" shall not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means any person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971; R.C.M. 1947, 40-5705(1), (3) thru (7).

33-10-103. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under 33-10-106 and shall exercise its powers through a board of directors established under 33-10-104.

History: En. Sec. 6, Ch. 63, L. 1971; R.C.M. 1947, 40-5706.

33-10-104. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971; R.C.M. 1947, 40-5707(part).

33-10-105. General powers and duties. (1) The association shall:

(a) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested;

(d) notify such persons as the commissioner directs under 33-10-109(2)(a);

(e) handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(f) reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to such contracts as are necessary to carry out the purpose of this part;

(e) perform such other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(part).

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-106. Plan of operation — delegation to other organization. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) establish the procedures whereby all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(2)(b) and 33-10-116, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in

two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: **En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part).**

Cross-References

Notice and hearing by Commissioner, 33-1-313.

33-10-107. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: **En. Sec. 15, Ch. 63, L. 1971; R.C.M. 1947, 40-5715.**

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-108. Prevention of insolvencies — directors' and commissioner's action. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: **En. Sec. 13, Ch. 63, L. 1971; R.C.M. 1947, 40-5713; amd. Sec. 140, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (4).

Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner. (1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after he receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(c) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part shall be subject to judicial review in a court of competent jurisdiction.

History: **En. Sec. 10, Ch. 63, L. 1971; R.C.M. 1947, 40-5710.**

Cross-References

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

33-10-110. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: **En. Sec. 17, Ch. 63, L. 1971; R.C.M. 1947, 40-5717.**

33-10-111. Stay of proceedings — reopening of default judgments. (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for 60 days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits.

History: **En. Sec. 18, Ch. 63, L. 1971; R.C.M. 1947, 40-5718.**

Cross-References

Standing of associations, 33-2-1335, 33-2-1349.

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

33-10-112. Examination of association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: **En. Sec. 14, Ch. 63, L. 1971; R.C.M. 1947, 40-5714.**

33-10-113. Claims — notice. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

History: **En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part).**

33-10-114. Claims — effect as to insured and receiver. (1) Any person recovering under this part shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: **En. Sec. 11, Ch. 63, L. 1971; R.C.M. 1947, 40-5711.**

Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

Standing of associations, 33-2-1335, 33-2-1349.

Priority of association's claims, 33-2-1363.

33-10-115. Recovery — sequence — nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: **En. Sec. 12, Ch. 63, L. 1971; R.C.M. 1947, 40-5712.**

33-10-116. Assessment. (1) The association shall assess insurers amounts necessary to pay the obligations of the association under 33-10-105(1)(a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under 33-10-108, and other expenses authorized by this part.

(2) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 2% of that member insurer's net direct written premiums for the preceding calendar year.

(3) If the maximum assessment together with the other assets of the association does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(4) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

(5) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

History: **En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(1)(c).**

33-10-117. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: **En. Sec. 16, Ch. 63, L. 1971; R.C.M. 1947, 40-5716.**

Part 2

Life and Health Insurance Guaranty Associations

Part Cross-References

Insurer's supervision, rehabilitation, and liquidation, Title 33, ch. 2, part 13.

33-10-201. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(5) This part shall not apply to:

(a) any such policies or contracts or any part of such policies or contracts under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(6) This part shall be liberally construed to effect the purpose under subsections (2) and (3) which shall constitute an aid and guide to interpretation.

(7) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

History: En. 40-5801 thru 40-5804, 40-5814 by Secs. 1 thru 4, 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5801, 40-5802, 40-5803, 40-5804, 40-5814(1).

33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) and (5) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer deemed by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (5) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

History: En. 40-5805 by Sec. 5, Ch. 245, L. 1974; R.C.M. 1947, 40-5805(1), (2), (4) thru (10); amd. Sec. 140, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (5)(a).

33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain three accounts:

(a) the health insurance account;

(b) the life insurance account; and

(c) the annuity account.

(3) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974; R.C.M. 1947, 40-5806.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-204. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of five members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

History: **En. 40-5807 by Sec. 7, Ch. 245, L. 1974; R.C.M. 1947, 40-5807(part).**

33-10-205. General powers of association — standing. (1) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-228;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

(2) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(3) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(7), (8), (11).**

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-206. Records of meetings and negotiations. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under this part. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under 33-10-209.

History: **En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(2); amd. Sec. 140, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation".

33-10-207. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: **En. 40-5818 by Sec. 18, Ch. 245, L. 1974; R.C.M. 1947, 40-5818.**

33-10-208. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real property.

History: **En. 40-5816 by Sec. 16, Ch. 245, L. 1974; R.C.M. 1947, 40-5816.**

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-209. Examination of the association — annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: **En. 40-5815 by Sec. 15, Ch. 245, L. 1974; R.C.M. 1947, 40-5815.**

Cross-References

Examination by Commissioner, Title 33, ch. 1, part 4.

33-10-210. Unfair trade practice. It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

History: **En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(5).**

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-10-211 through 33-10-214 reserved.

33-10-215. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(1).

Cross-References

Liquidation or rehabilitation proceedings, Title 33, ch. 2, part 13.

33-10-216. Plan of operation — delegation of powers provision. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-205(1)(c) and 33-10-227, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be

reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. 40-5810 by Sec. 10, Ch. 245, L. 1974; R.C.M. 1947, 40-5810.

Cross-References

Promulgation of rules by Commissioner, 33-1-313.

33-10-217. Prevention of impairments. To aid in the detection and prevention of insurer impairments the board of directors is given the following powers and duties:

(1) The board shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(3) The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. Such reports and recommendations shall not be considered public documents.

(4) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(5) The board shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part); amd. Sec. 17, Ch. 198, L. 1979; amd. Sec. 140, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (3).

33-10-218. Examination by commissioner — cost. (1) The commissioner may conduct the examination requested by the board pursuant to 33-10-217(2). The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports.

(2) In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (4). The commissioner shall notify the board of directors when the examination is completed.

(3) The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(4) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part).

33-10-219. Impaired insurer — association's powers prior to liquidation. (1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a) and assure payment of the contractual obligations of the impaired insurer pending action under subsection (a);

(c) loan money to the impaired insurer.

(2) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or supervision, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured the impaired insurer's covered policies of residents;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a) and assure payment of the impaired insurer's contractual obligations to residents pending action under subsection (a);

(c) loan money to the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(1), (2); amd. Sec. 140, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (2).

Cross-References

Rehabilitation orders, 33-2-1332.

Liquidation orders, 33-2-1342.

33-10-220. Impaired insurer — association's powers during liquidation. (1) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or supervision, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) assure payment of the contractual obligations of the impaired insurer to residents; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(3) If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this part with respect to such domestic, foreign, or alien impaired insurer.

(4) In carrying out its duties under subsections (1) and (2), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and such liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(5) Before being obligated under subsections (1) and (2), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(6) The association shall have no liability under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(3) thru (6); amd. Sec. 140, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (2).

Cross-References

Orders of rehabilitation, 33-2-1332.
Orders of liquidation, 33-2-1342.

33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or supervision of any member insurer.

(2) The liquidator, rehabilitator, or supervisor of any impaired insurer may notify all interested persons of the effect of this part.

History: **En. 40-5811, 40-5813 by Secs. 11, 13, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(4), 40-5813; amd. Sec. 140, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (1).

33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: **En. 40-5819 by Sec. 19, Ch. 245, L. 1974; R.C.M. 1947, 40-5819; amd. Sec. 140, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (1).

Cross-References

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

Order of rehabilitation, 33-2-1332.

Order of liquidation, 33-2-1342.

33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(9).**

33-10-224. Extent of liability. The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(4), but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of $300,000.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(10).**

33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the

reserve that should have been established for all policies of insurance written by the impaired insurer.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(3).

Cross-References

Assets from liquidation, 33-2-1363.

33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or supervision proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(4); amd. Sec. 140, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervision" for "conservation" in (1).

Cross-References

Assets from liquidation, 33-2-1363.

33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219(1) and 33-10-220(1) with regard to an impaired domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219(2) and 33-10-220(2) with regard to an impaired foreign or alien insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by such insurer on all covered policies.

(b) Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bear to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bear to such premiums received on business in each state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(8) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974; R.C.M. 1947, 40-5809.

33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions. (1) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(2) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(2), (3).

Cross-References

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's orders, 33-1-711.

Revocation or suspension of certificates of authority, 33-2-118, 33-2-119.

33-10-229. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (2) through (4).

(2) No such dividend is recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(5) If any person liable under subsection (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(6); amd. Sec. 18, Ch. 198, L. 1979.

33-10-230. Tax — writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to

33-10-227(8), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;
(b) 80% for the first calendar year after year of issuance;
(c) 60% for second calendar year after year of issuance;
(d) 40% for third calendar year after year of issuance;
(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to 33-10-227(6), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes for this part shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

History: **En. 40-5817 by Sec. 17, Ch. 245, L. 1974; R.C.M. 1947, 40-5817.**

Cross-References

Tax on premiums, 33-2-705.

CHAPTERS 11 THROUGH 13

RESERVED

CHAPTER 14

INSURANCE PREMIUM FINANCE COMPANIES

Part 1 — General Provisions

Section

33-14-101. Short title.
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Part 1

General Provisions

33-14-101. Short title. This chapter may be cited as the "Insurance Premium Finance Company Act".

History: **En. Sec. 1, Ch. 360, L. 1981.**

33-14-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance agreements from insurance agents, brokers, or other premium finance companies.

(2) "Licensee" means a premium finance company holding a license issued by the commissioner under this chapter.

(3) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a finance charge as authorized by this chapter, and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

History: **En. Sec. 2, Ch. 360, L. 1981.**

Part 2

Licensing

33-14-201. License required — fee — renewal of license. (1) Except as provided in subsection (4), no person may engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee shall be paid to the commissioner.

(3) The person to whom the license or the renewal thereof is issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(4) No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance agent

who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner.

History: **En. Sec. 3, Ch. 360, L. 1981.**

33-14-202. Investigation of applicant — qualifications — hearing. (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state.

History: **En. Sec. 4, Ch. 360, L. 1981.**

33-14-203. License revocation — suspension. The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

(1) a license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) the company has violated any provisions of this chapter.

History: **En. Sec. 5, Ch. 360, L. 1981.**

33-14-204. Records required of licensees — form — inspection. (1) Every premium finance company shall maintain records of its premium finance transactions, and the records shall be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring such records as he may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form.

History: **En. Sec. 6, Ch. 360, L. 1981.**

Part 3

Operation and Regulation

33-14-301. Premium finance agreements — contents — form — delivery. (1) A premium finance agreement shall:

(a) be dated, signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion thereof shall be in at least 8-point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium therefor; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance (the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii));

(iv) the amount of the finance charge;

(v) the balance payable by the insured (the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)); and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in subsection (1)(c) need not be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement if the premium finance company and the insured enter into an open-end credit transaction, which is defined as a plan prescribing the terms of credit transactions that may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) The premium finance company or the insurance agent shall deliver to the insured or mail to him at his address shown in the agreement a complete copy of the agreement.

History: En. Sec. 7, Ch. 360, L. 1981.

33-14-302. Charges for premium financing regulated — method of computation. (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by this chapter.

(2) The finance charge must be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of $12.50 per premium finance agreement. The service charge of $12.50 need not be refunded upon cancellation or prepayment.

(4) An insured may prepay his premium finance agreement in full at any time prior to the due date of the final payment and in such event the unearned finance charge shall be refunded.

History: En. Sec. 8, Ch. 360, L. 1981.

33-14-303. Delinquency charges regulated. (1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of $1 to a maximum of 5% of the delinquent installment but not to exceed $5 on any installment that is in default for 5 days or more.

(2) If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for payment by the insured of a cancellation charge equal to the difference between any delinquency charge or default charge imposed with respect to the installment in default and $5. A premium finance agreement may also provide for the payment of attorney's fees and court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

History: **En. Sec. 9, Ch. 360, L. 1981.**

33-14-304. Cancellation of insurance upon default. (1) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than 10 days' written notice must be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or broker indicated on the premium finance agreement shall also be mailed 10 days' notice of this action.

(3) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself but without requiring the return of the insurance contract. If the insurer or its agent does not provide the insurance premium finance company with a specific mailing address for the purpose of receipt of the above notice, mailing by the insurance premium finance company to the insurer at the address that is on file and of record with the commissioner is considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last-known address and to the insurance agent or broker indicated on the premium finance agreement.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

History: **En. Sec. 10, Ch. 360, L. 1981.**

33-14-305. Return of unearned premiums. (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that no refund is required if such excess amounts to less than $1.

History: En. Sec. 11, Ch. 360, L. 1981.

33-14-306. Agreement effective as security interest. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of the agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

History: En. Sec. 12, Ch. 360, L. 1981.

33-14-307. Exceptions. This chapter does not apply to any insurance company or insurance companies affiliated under the same management and control authorized to do business in this state which provide installment premium payments programs at no interest to policyholders or to an insurance agent licensed to do business in this state on policies written by the agent or issued by the company or companies.

History: En. Sec. 13, Ch. 360, L. 1981.

CHAPTER 15

THE INSURANCE CONTRACT

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Section

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Chapter Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Part 1

Scope and Definitions

33-15-101. Scope. This chapter shall not apply as to:

(1) reinsurance;

(2) policies or contracts not issued for delivery in this state or delivered in this state;

(3) ocean marine and foreign trade insurances;

(4) title insurance, except as to the following provisions: 33-15-102, 33-15-103, 33-15-303, 33-15-305, 33-15-306, 33-15-307, 33-15-316, and 33-15-411.

History: En. Sec. 258, Ch. 286, L. 1959; R.C.M. 1947, 40-3701; amd. Sec. 17, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "33-15-102", "33-15-303", "33-15-307", and "33-15-411" in the list of sections in (4); made minor changes in phraseology.

Cross-References

Ocean marine insurance — definition, 33-1-209.

Title insurance — definition, 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-15-102. Definitions. (1) "Premium" is the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

(2) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached thereto and a part thereof.

History: En. Secs. 259, 260, Ch. 286, L. 1959; R.C.M. 1947, 40-3702, 40-3703.

Cross-References

Premium — exception of placement fee — state compensation insurance fund, 33-18-212.

33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body, or health or any contract such minor effected upon his own property, liabilities, or other interests or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2) above is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums except as and when consented to by the guardian and approved by the district court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under 33-15-201.

History: En. Sec. 267, Ch. 286, L. 1959; R.C.M. 1947, 40-3710; amd. Sec. 147, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "district court" for "probate court", in (3).

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

Minors — acquittance and discharge, 33-15-502.

Avoidance of contracts by minors, 41-1-304.

Part 2

Insurable Interests

33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

History: En. Sec. 261, Ch. 286, L. 1959; R.C.M. 1947, 40-3704; amd. Sec. 148, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "personal representative" for "executor or administrator, as the case may be" in (2).

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

Personal representatives — actions by, 72-3-613.

33-15-202 through 33-15-204 reserved.

33-15-205. Restrictions on property insurance — interest. (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.
History: **En. Sec. 262, Ch. 286, L. 1959; R.C.M. 1947, 40-3705.**

33-15-206. Interest of named insured — change of interest on death — transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to his own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking his interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.
History: **En. Secs. 263, 264, 265, Ch. 286, L. 1959; R.C.M. 1947, 40-3706, 40-3707, 40-3708.**

33-15-207. Insurance without interest or of wager — void. (1) Every stipulation in a policy of insurance of property for the payment of loss without regard to absence of an insurable interest in such property on the part of the insured or that the policy shall be received as proof of such interest is void.

(2) Every policy executed by way of gaming or wagering is void.
History: **En. Sec. 266, Ch. 286, L. 1959; R.C.M. 1947, 40-3709.**

Cross-References
Insuring lottery tickets — crime, 23-5-207.

Part 3

Policy Provisions

33-15-301. Requiring standard provisions — waiver. (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

(a) he finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) the policy is otherwise approved by him.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) No such provision, if required to be contained in the policy, can be waived by agreement between the insurer and any other person.
History: **En. Sec. 273, Ch. 286, L. 1959; R.C.M. 1947, 40-3716.**

Cross-References
Approval of forms, Title 33, ch. 1, part 5.
Hearings by Commissioner, 33-1-701.

33-15-302. Policy must contain entire contract. The policy, when issued, shall contain the entire contract between the parties, and neither the insurer or any agent or representative thereof nor any person insured thereunder shall make any agreement as to the insurance which is not plainly expressed in the policy. This provision shall not be deemed to prohibit the modification of a policy, after issuance, by written rider or endorsement duly issued by the insurer.

History: En. Sec. 274, Ch. 286, L. 1959; R.C.M. 1947, 40-3717.

33-15-303. Contents of policies in general — identification. (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance thereunder takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(3) Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies.

(4) All policies and annuity contracts issued by insurers and the forms thereof filed with the commissioner shall have printed thereon an appropriate designating letter or figure or combination of letters or figures or terms identifying the respective forms of policies or contracts, together with the year of adoption of such form. Whenever any change is made in any such form, the designating letters, figures, or terms and year of adoption thereon shall be correspondingly changed.

History: En. Sec. 275, Ch. 286, L. 1959; R.C.M. 1947, 40-3718; amd. Sec. 18, Ch. 303, L. 1981.

Compiler's Comments
1981 Amendment: Deleted "domestic" before "insurers" near the beginning of (4).

Cross-References
Group insurance, Title 33, ch. 20, parts 10 through 12; Title 33, ch. 22, part 5.
Surety insurance, Title 33, ch. 26.

33-15-304. Permissible content. A policy may contain additional provisions not inconsistent with this code and which are:

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

History: En. Sec. 276, Ch. 286, L. 1959; R.C.M. 1947, 40-3719.

33-15-305. Prohibited content — charter or bylaws. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer, other than the subscribers' agreement or power of attorney of a reciprocal insurer, a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

History: En. Sec. 277, Ch. 286, L. 1959; R.C.M. 1947, 40-3720.

Cross-References

Power of attorney — reciprocal insurer, 33-5-301.

33-15-306. Execution of policies — facsimile signature. (1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

History: En. Sec. 278, Ch. 286, L. 1959; R.C.M. 1947, 40-3721.

33-15-307. Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue and shall be jointly and severally liable on an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department, and such policy shall plainly show the true name of the insurer.

(2) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(a) that the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy; and

(b) that service of process or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to cosurety obligations.

History: En. Sec. 279, Ch. 286, Ch. 1959; R.C.M. 1947, 40-3722.

33-15-308 through 33-15-314 reserved.

33-15-315. Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

History: En. Sec. 281, Ch. 286, L. 1959; R.C.M. 1947, 40-3724.

33-15-316. Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application which is a part of the policy.

History: **En. Sec. 282, Ch. 286, L. 1959; R.C.M. 1947, 40-3725.**

33-15-317 through 33-15-320 reserved.

33-15-321. Life and disability insurance policy language simplification. Sections 33-15-321 through 33-15-329 may be cited as the "Life and Disability Insurance Policy Language Simplification Act".

History: **En. Sec. 1, Ch. 302, L. 1981.**

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

33-15-322. Purpose. (1) The purpose of 33-15-321 through 33-15-329 is to establish minimum standards for language used in policies, contracts, and certificates of life, disability, credit life, and credit disability insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.

(2) Sections 33-15-321 through 33-15-329 are not intended to increase the risk assumed by insurance companies or other entities subject to 33-15-321 through 33-15-329 or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, disability, credit life, or credit disability insurance policies. Sections 33-15-321 through 33-15-329 are not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

History: **En. Sec. 2, Ch. 302, L. 1981.**

33-15-323. Definitions. As used in 33-15-321 through 33-15-329, the following definitions apply:

(1) "Company" or "insurer" means any life or disability insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar types of organizations.

(2) "Policy" or "policy form" means any:

(a) policy, contract, plan, or agreement of life or disability insurance, including credit life and credit disability insurance, delivered or issued for delivery in this state by any company subject to 33-15-321 through 33-15-329;

(b) certificate, contract, or policy issued by a fraternal benefit society; and

(c) certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

History: **En. Sec. 3, Ch. 302, L. 1981.**

33-15-324. Application — exceptions. (1) Sections 33-15-321 through 33-15-329 apply to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under 33-15-321 through 33-15-329, but nothing in 33-15-321 through 33-15-329 applies to:

(a) a policy which is a security subject to federal jurisdiction;

(b) a group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy, but a certificate issued pursuant to a group policy delivered or issued for delivery in this state is not exempt;

(c) a group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(d) a form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under 33-15-321 through 33-15-329; or

(e) the renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under 33-15-321 through 33-15-329.

(2) Sections 33-15-321 through 33-15-329 provide the exclusive manner for determining language simplification standards for any policy forms.

(3) A non-English language policy delivered or issued for delivery in this state is in compliance with 33-15-325(1)(a) if the insurer certifies that the policy is translated from an English language policy which complies with 33-15-325(1)(a).

History: En. Sec. 4, Ch. 302, L. 1981.

33-15-325. Minimum policy language simplification standards. (1) In addition to any other requirements of law, no policy form, except as stated in 33-15-324, may be delivered or issued for delivery in this state on or after the date such form must be approved under 33-15-321 through 33-15-329, unless:

(a) the text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);

(b) it is printed, except for specification pages, schedules, and tables, in not less than 10-point type, 1-point leaded;

(c) the style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(d) it contains a table of contents or an index of the principal sections of the policy if the policy has more than 3,000 words printed on three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

(2) For the purposes of this section, a Flesch reading ease test score is measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire form is analyzed. For policy forms containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples must be separated by at least 20 printed lines.

(b) The number of words and sentences in the text is counted and the total number of words is divided by the total number of sentences. The figure obtained is multiplied by a factor of 1.015.

(c) The total number of syllables is counted and divided by the total number of words. The figure obtained is multiplied by a factor of 84.6.

(d) The sum of the figures computed under (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of subsections (2)(b), (c), and (d), the following procedures are used:

(i) a contraction, hyphenated word, or numbers and letters, if separated by spaces, are counted as one word;

(ii) a unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence; and

(iii) a syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this section includes all printed matter except the following:

(i) the name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules, or tables; and

(ii) policy language which is drafted to conform to the requirements of a federal law, regulation, or agency interpretation; policy language required by a collectively bargained agreement; medical terminology; words which are defined in the policy; and policy language required by law or regulation. The insurer must identify the language or terminology excepted by this subsection and certify in writing that the language or terminology is entitled to be excepted by this subsection.

(3) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

(4) Filings subject to this section must be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with 33-15-327. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(5) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

History: En. Sec. 5, Ch. 302, L. 1981.

33-15-326. Construction — time period. Nothing in 33-15-321 through 33-15-329 may be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

History: En. Sec. 6, Ch. 302, L. 1981.

33-15-327. Powers of the commissioner. The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-325(1)(a) whenever, in his sole discretion, he finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

History: **En. Sec. 7, Ch. 302, L. 1981.**

33-15-328. Approval of forms. A policy form meeting the requirements of 33-15-325(1)(a) may be approved by the commissioner notwithstanding the provisions of other laws that specify content of policies if the approved policy form provides policyholders and claimants protection not less favorable than they would be entitled to under such laws.

History: **En. Sec. 8, Ch. 302, L. 1981.**

33-15-329. Applicability schedule. (1) Except as provided in 33-15-324, 33-15-321 through 33-15-329 apply to all policy forms filed on or after July 1, 1983. No policy form may be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under 33-15-321 through 33-15-329. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by 33-15-321 through 33-15-329 need not be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in 33-15-325(4).

(2) The commissioner may, in his sole discretion, extend the dates in subsection (1).

History: **En. Sec. 10, Ch. 302, L. 1981.**

Part 4

Application, Issuance, Renewal, and Assignment

33-15-401. Application required — life and disability insurance. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of or pertaining to such minor.

(3) Family policies insuring any two or more members of a family may be issued on an application signed by either parent, a stepparent, or by a husband or wife.

History: **En. Sec. 268, Ch. 286, L. 1959; R.C.M. 1947, 40-3711.**

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

33-15-402. Application as evidence — copy to insured — alteration. (1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 30 days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

(4) No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

History: En. Sec. 269, Ch. 286, L. 1959; R.C.M. 1947, 40-3712.

Cross-References

Industrial life insurance policies defined, 33-20-102.

33-15-403. Representations in applications — recovery precluded if fraudulent or material. (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations therefor by or in behalf of the insured or annuitant shall be deemed to be representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(a) fraudulent;

(b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

History: **En. Sec. 270, Ch. 286, L. 1959; R.C.M. 1947, 40-3713.**

Cross-References

Fraud, misrepresentation, or mistake — contract rules, Title 28, ch. 2, part 4.

33-15-404 through 33-15-410 reserved.

33-15-411. Binders for temporary insurance. (1) Binders or other contracts for temporary insurance may be made orally or in writing and shall be deemed to include all the usual terms of the policy as to which the binder was given, together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given or beyond 90 days from its effective date, whichever period is the shorter.

(3) If the policy has not been issued, a binder may be extended or renewed beyond such 90 days with the written approval of the insurer.

(4) This section shall not apply to life or disability insurance.

History: **En. Sec. 283, Ch. 286, L. 1959; R.C.M. 1947, 40-3726.**

33-15-412. Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle or aircraft, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy or memorandum thereof containing the same such information shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum.

History: **En. Sec. 284, Ch. 286, L. 1959; R.C.M. 1947, 40-3727.**

33-15-413. Renewal by certificate. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor, for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy.

History: **En. Sec. 285, Ch. 286, L. 1959; R.C.M. 1947, 40-3728.**

33-15-414. Assignment. (1) A policy or group certificate issued thereunder may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to July 1, 1971.

History: **En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971; R.C.M. 1947, 40-3729.**

Part 5

Claims and Benefits

33-15-501. Payment discharges insurer — notice to contrary. Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract or the exercise of any right or privilege thereunder and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

History: **En. Sec. 287, Ch. 286, L. 1959; R.C.M. 1947, 40-3730.**

Cross-References

Extinction of contractual obligation by performance, Title 28, ch. 1, part 11.

Destruction of property to defraud insurer — crime, 45-6-101.

33-15-502. Minor may give acquittance. (1) Any minor domiciled in this state who has attained the age of 16 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding $3,000 in any one year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, provided such policy, contract, or agreement shall provide for the payment or payments to such minor and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in 33-15-103.

(2) This section shall not be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.

History: En. Sec. 288, Ch. 286, L. 1959; R.C.M. 1947, 40-3731.

Cross-References

Contractual capacity of minors, Title 41, ch. 1, part 3.

33-15-503. Forms for proof of loss to be furnished. An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

History: En. Sec. 289, Ch. 286, L. 1959; R.C.M. 1947, 40-3732.

Cross-References

Multiple proofs required — unfair trade practice, 33-18-201.

33-15-504. Claims administration not waiver. Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) acknowledgment of the receipt of notice of loss or claim under the policy;

(2) furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted;

(3) investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

History: En. Sec. 290, Ch. 286, L. 1959; R.C.M. 1947, 40-3733.

33-15-505 through 33-15-510 reserved.

33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; except that, subject to the statute of limitations, the amount of any premiums for such insurance paid with intent to defraud creditors with interest thereon shall enure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability thereof by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount so claimed.

(2) For the purposes of subsection (1) above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

History: **En. Sec. 291, Ch. 286, L. 1959; R.C.M. 1947, 40-3734.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Statutes of Limitation, Title 27, ch. 2.

33-15-512. Exemption from execution of proceeds of group life — exception. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance issued pursuant to parts 10, 11, and 12 of chapter 20 to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

History: **En. Sec. 292, Ch. 286, L. 1959; R.C.M. 1947, 40-3735.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

History: **En. Sec. 293, Ch. 286, L. 1959; R.C.M. 1947, 40-3736.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights. (1) The benefits, rights, privileges, and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant shall not be subject to execution, nor shall the annuitant be compelled to exercise any such rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant shall not at any time exceed $250 per month for the length of time represented by such installments and that such periodic payments in excess of $350 per month shall be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant shall at any time exceed payment at the rate of $350 per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract so provides, the benefits, rights, privileges, or options accruing under such contract to a beneficiary or assignee shall not be transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained herein for the annuitant shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives or for a specified term or terms.

History: **En. Sec. 294, Ch. 286, L. 1959; R.C.M. 1947, 40-3737.**

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

CHAPTER 16

RATES — RATING AND ADVISORY ORGANIZATIONS

Part 1 — General Provisions

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33-16-103. Application.
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33-16-1005. Membership in rating organization required — filings with commissioner.
33-16-1006. Repealed.
33-16-1007. Renumbered 33-16-1011 by Code Commissioner, 1981.
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33-16-1011. Classification and rating committee — membership — term.
33-16-1012. Functions and powers of classification and rating committee.

Part 1

General Provisions

33-16-101. Purpose and intent. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in ratemaking and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: **En. Sec. 1, Ch. 362, L. 1969; R.C.M. 1947, 40-3634.**

33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

(2) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(3) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans, or rating systems and which do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Subscriber" means an insurer which is furnished at its request with rates and rating manuals by a rating organization of which it is not a member

or with advisory services by an advisory organization of which it is not a member.

(5) "Willful" or "willfully", in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: **En. Secs. 2, 3, 4, 5, Ch. 362, L. 1969; R.C.M. 1947, 40-3635, 40-3636, 40-3637, 40-3638.**

33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) life insurance;

(2) disability insurance;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

History: **En. Sec. 6, Ch. 362, L. 1969; amd. Sec. 1, Ch. 558, L. 1977; R.C.M. 1947, 40-3639; amd. Sec. 1, Ch. 126, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "(6) title insurance."

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system.

History: **En. Sec. 33, Ch. 362, L. 1969; R.C.M. 1947, 40-3666.**

33-16-105. Maintenance of records. Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(1).

33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, agents, and employees — expense. (1) (a) The commissioner shall, at least once every 5 years, and may as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. He may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance.

(b) In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether such organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, agents, and employees of any such organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by such organization, group, association, or insurer in the conduct of the operations to which such examination relates.

(4) The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association, or insurer to be examined.

History: En. Secs. 22, 23, 24, 25, Ch. 362, L. 1969; R.C.M. 1947, 40-3655, 40-3656, 40-3657, 40-3658.

33-16-107. Information not to be willfully withheld. No person, insurer, or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner or to any rating organization, advisory organization, insurer, or group, association, or other organization of insurers which will affect the rates, rating systems, or premiums for the classes of insurance to which the provisions of this chapter are applicable.

History: **En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(a).**

Cross-References

Penalties for violation of Montana Insurance Code — general provision, 33-1-104.

Penalty for violation of chapter, 33-16-114.

33-16-108 through 33-16-110 reserved.

33-16-111. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: **En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).**

Cross-References

Hearings by Commissioner, 33-1-701.

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

33-16-112. Failure to comply with order — suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113.

History: **En. Sec. 30, Ch. 362, L. 1969; R.C.M. 1947, 40-3663.**

Cross-References

Suspension or revocation of certificate of authority, 33-2-118, 33-2-119.

33-16-113. Appeal from order or decision of commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside or has his principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969; R.C.M. 1947, 40-3664.

Cross-References

Judicial appeals of contested administrative proceedings, 2-4-702.

Appeals from Commissioner, 33-1-711.

33-16-114. Penalty. (1) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding $50. If such failure be willful, he or it shall be liable to the state in an amount not exceeding $5,000 for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(b), (c).

Cross-References

Actions by state agencies — notification of Attorney General required, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

33-16-115. Acts done by authority of chapter not violation of other laws. No act done, action taken, or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969; R.C.M. 1947, 40-3667.

Cross-References

Unlawful price fixing, 30-14-205.

33-16-116. Administration or enforcement — supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: **En. Sec. 35, Ch. 362, L. 1969; R.C.M. 1947, 40-3668.**

Part 2

Rates and Rating Plans

33-16-201. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

(b) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(c) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same or unless such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which such experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management,

individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is 3 years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973; R.C.M. 1947, 40-3640.

33-16-202. Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969; R.C.M. 1947, 40-3669.

Cross-References

Promulgation of rules by Commissioner, 33-1-313.

33-16-203. Rates filed. Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(2); amd. Sec. 1, Ch. 241, L. 1979.

33-16-204. Review of rates on request by aggrieved person. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in 33-16-205.

History: **En. Sec. 26, Ch. 362, L. 1969; R.C.M. 1947, 40-3659.**

Cross-References

Public documents open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-16-205. Noncompliance of rates — notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that such insurer, organization, group, or association or any rate, rating plan, or rating system made or used by any such insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group, or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.

History: **En. Sec. 27, Ch. 362, L. 1969; R.C.M. 1947, 40-3660.**

33-16-206. Hearings — notice — subject of hearing. (1) If the commissioner has good cause to believe such noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group, or association. If no notice has been given as provided in 33-16-205, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing shall not include any additional subjects not specified in the notices required by 33-16-205 or this section.

History: **En. Sec. 28, Ch. 362, L. 1969; R.C.M. 1947, 40-3661.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-207 through 33-16-210 reserved.

33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

History: **En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).**

Part 3

Insurers Acting in Concert

Part Cross-References

Price fixing, 30-14-205.

33-16-301. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: **En. Sec. 8, Ch. 362, L. 1969; R.C.M. 1947, 40-3641.**

33-16-302. Insurers with common ownership or cosureties on bond — acting in concert. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: **En. Sec. 9, Ch. 362, L. 1969; R.C.M. 1947, 40-3642.**

33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and 33-16-1005 shall not agree with each other or rating organizations or others to adhere thereto.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization shall not be sufficient in itself to support a finding that an agreement to so adhere exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: **En. Sec. 10, Ch. 362, L. 1969; amd. Sec. 2, Ch. 558, L. 1977; R.C.M. 1947, 40-3643.**

33-16-304. Exchange of information or experience data — consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to ratemaking and the application of rating systems.

History: **En. Sec. 11, Ch. 362, L. 1969; R.C.M. 1947, 40-3644.**

33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(2) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate:

(a) the use of rates which meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than 10 days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or

practice. For good cause and after hearing upon not less than 10 days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: **En. Sec. 12, Ch. 362, L. 1969; R.C.M. 1947, 40-3645.**

Cross-References

Hearings by Commissioner, 33-1-701.

Casualty insurance — general provisions, Title 33, ch. 23.

33-16-306. Joint underwriters and reinsurers — compliance. Upon compliance with the provisions of this chapter applicable thereto, any rating organization, advisory organization, and any group, association, or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group, or association that has not complied with the provisions of this chapter applicable to it.

History: **En. Sec. 13, Ch. 362, L. 1969; R.C.M. 1947, 40-3646.**

33-16-307. Joint underwriting and joint reinsurance — application — restrictions on operations. (1) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization or by standing agreement among the members thereof, shall file with the commissioner:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such group, association, or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and its bylaws and rules governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association, or organization may be served.

(3) No such group, association, or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: **En. Sec. 20, Ch. 362, L. 1969; R.C.M. 1947, 40-3653.**

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-16-308. Advisory organizations — application — requisites — restrictions on operations. (1) No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner:

(a) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws or rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members and subscribers; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969; R.C.M. 1947, 40-3652.

Cross-References

Unfair trade practices, Title 33, ch. 18.

Part 4

Rating Organizations

33-16-401. Rating organizations — compliance — application. (1) No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter.

(2) Every such rating organization shall file with its application:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business, all duly certified by the custodian or the originals thereof;

(b) a list of its members and subscribers;

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969; R.C.M. 1947, 40-3647.

33-16-402. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(1) permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination or withdraw therefrom;

(2) neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms;

(3) neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(4) neither practice nor sanction any plan or act of boycott, coercion, or intimidation;

(5) neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business;

(6) notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served;

(7) comply with the provisions of 33-16-105 and 33-16-203.

History: **En. Sec. 15, Ch. 362, L. 1969; R.C.M. 1947, 40-3648.**

33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs, and its proposed plan of business as he deems desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be $100 annually which shall be deposited in the general fund.

History: **En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973; R.C.M. 1947, 40-3649.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-404. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: **En. Sec. 17, Ch. 362, L. 1969; R.C.M. 1947, 40-3650.**

33-16-405: Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: **En. Sec. 18, Ch. 362, L. 1969; R.C.M. 1947, 40-3651.**

Parts 5 through 9 reserved

Part 10

Workers' Compensation Rates and Rating Organizations

33-16-1001. Declaration of policy and purpose. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert.

(2) It is the purpose of this part to:

(a) authorize such ratemaking in concert and the operating of rating organizations thereto; and

(b) establish the general bases and standards for the making of such rates.

History: **En. Sec. 1, Ch. 329, L. 1969; amd. Sec. 3, Ch. 558, L. 1977; R.C.M. 1947, 40-5601.**

33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22.

History: **En. Sec. 2, Ch. 329, L. 1969; amd. Sec. 4, Ch. 558, L. 1977; R.C.M. 1947, 40-5602.**

33-16-1003. Certain reciprocal insurers excluded. This part shall not apply as to any reciprocal insurer transacting workers' compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: **En. Sec. 3, Ch. 329, L. 1969; R.C.M. 1947, 40-5603.**

Cross-References

Reciprocal insurers — general provisions, Title 33, ch. 5, part 1.

33-16-1004. Rates — considerations — methods — standards. All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any

subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited.

History: **En. Secs. 4, 5, 6, Ch. 329, L. 1969; R.C.M. 1947, 40-5604, 40-5605, 40-5606.**

33-16-1005. Membership in rating organization required — filings with commissioner. (1) Every insurer, including the division of workers' compensation, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization.

History: **En. Sec. 16, Ch. 329, L. 1969; amd. Sec. 5, Ch. 558, L. 1977; R.C.M. 1947, 40-5616.**

Cross-References

Division of Workers' Compensation — Department of Labor and Industry, 2-15-1702.

Workers' Compensation Plan No. 2 — insurance coverage, Title 39, ch. 71, part 22.

33-16-1006. Repealed. Sec. 5, Ch. 114, L. 1981.

History: **En. Sec. 17, Ch. 329, L. 1969; R.C.M. 1947, 40-5617.**

33-16-1007. Renumbered 33-16-1011 by Code Commissioner, 1981.

33-16-1008 through 33-16-1010 reserved.

33-16-1011. Classification and rating committee — membership — term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the division of workers' compensation who is an employee of the division and who shall be appointed by the administrator of the division.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

History: En. Sec. 18, Ch. 329, L. 1969; amd. Sec. 6, Ch. 558, L. 1977; R.C.M. 1947, 40-5618; amd. Sec. 1, Ch. 114, L. 1981; MCA 1979, 33-16-1007; redes. 33-16-1011 by Code Commissioner, 1981.

Compiler's Comments

1981 Amendment: Substituted the section, relating to classification and rating committee, for provisions that entitled the division of workers' compensation membership, without election, on any committee of a rating organization of which it was a member and that set the membership of the committee at three with additional members representing stock insurers (one) and nonstock insurers (one).

Cross-References

Division of Workers' Compensation — Department of Labor and Industry, 2-15-1702.

33-16-1012. Functions and powers of classification and rating committee. The classification and rating committee shall:

(1) meet not less than semiannually to conduct its business;

(2) make the final determination regarding the establishment of all manual rules and classification;

(3) establish the advisory premium rates as provided for in 33-16-1005;

(4) publish such material and pamphlets as it considers appropriate; and

(5) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer. The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections.

History: En. Sec. 2, Ch. 114, L. 1981.

CHAPTER 17

AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS

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Part 1

General Provisions

33-17-101. Scope of chapter. This chapter shall apply as to all stock, mutual, and reciprocal insurers and as to all kinds of insurance and annuities.

History: En. Sec. 145, Ch. 286, L. 1959; R.C.M. 1947, 40-3301.

33-17-102. Definitions. (1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) A licensed attorney at law who is qualified to practice law in this state, a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent is not deemed to be an adjuster for the purposes of this chapter.

(c) A "public adjuster" is an adjuster employed by and representing the interests of the insured. The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

(2) An "agent" is an individual, firm, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(3) "Life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities.

(4) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

(5) A "managing general agent" is an individual, firm, or corporation appointed as an independent contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the insurer in this state, including the authority to appoint agents for such insurers and to terminate such appointments.

History: En. Secs. 146, 147, 148, 150, Ch. 286, L. 1959; R.C.M. 1947, 40-3302, 40-3303(part), 40-3304, 40-3306; amd. Sec. 5, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1)(a), inserted "or otherwise acts on behalf of the insurer" and inserted (1)(c); and inserted (5).

33-17-103. Exceptions and exemptions from definition of agent, managing general agent, and solicitor. The definitions of agent, managing general agent, and solicitor contained in 33-17-102 shall not be considered to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services.

History: En. Sec. 149, Ch. 286, L. 1959; R.C.M. 1947, 40-3305; amd. Sec. 6, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: In lead-in, inserted "managing general agent" after "agent" and changed "deemed" to "considered"; and in (2) substituted language at beginning of subsection before "who solicits" for "the supervising general, state, or special agent or other supervising officer or supervising salaried employee of an insurer".

Cross-References

Farm mutual insurers — license not required, 33-4-312.

Officers of fraternal benefit societies — license not required, 33-6-403.

Fraternal benefit societies — special license provisions, 33-7-525, 33-7-526.

Reciprocal insurer — attorney-in-fact, 33-17-103.

Part 2

Licensing and Appointment of Agents and Solicitors

Part Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

33-17-201. License required of agents, managing general agents, and solicitors — forms. (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

History: **En. Secs. 147, 151, Ch. 286, L. 1959; R.C.M. 1947, 40-3303(part), 40-3307; amd. Sec. 7, Ch. 518, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (2).

Cross-References

Penalty provision — Montana Insurance Code, 33-1-104.

33-17-202. General qualifications of resident agents and solicitors other than life insurance agents. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) must be 18 years of age or more;

(b) must be a resident in and of this state;

(c) if for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license;

(d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;

(e) must be competent, trustworthy, and of good reputation;

(f) must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor;

(g) must pass any written examination for the license required under this chapter;

(h) must intend in good faith to act as and must act as and hold himself out to be an agent or solicitor in the active solicitation and negotiation of insurance with the general public and not seek or use the license for the negotiation or effectuation of insurance on his own property or interests or those of his relatives or of his employer. If during any calendar year more than 35% of the commissions earned or prospectively to be earned by such an applicant or licensee have been or probably will be derived from insurance of his own property or interests and those of his relatives and of his employer, the license will be deemed to have been used or to be intended to be used in violation of this subsection (h).

(2) In determining the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: **En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971; R.C.M. 1947, 40-3308.**

33-17-203. General qualification for license as life or disability insurance agent. For the protection of the people of this state, the commissioner may not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter. In addition, the individual must qualify as follows:

(1) be 18 years of age or more;

(2) be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state;

(3) have been appointed as such an agent by an authorized insurer, subject to issuance of the license;

(4) be competent, trustworthy, and of good reputation;

(5) have had experience or training or be otherwise adequately qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code governing his operations as such an agent and with the provisions of the policies and contracts he proposes to offer under the license;

(6) pass any written examination for the license required under this chapter;

(7) not use or intend to use the license principally for the writing of insurance on the lives or interests of himself or his relatives to the second degree;

(8) not be a funeral director, undertaker, or mortician operating in this state or an officer, employee, or representative thereof or hold an interest in such business.

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969; R.C.M. 1947, 40-3309; amd. Sec. 19, Ch. 198, L. 1979; amd. Sec. 1, Ch. 400, L. 1983.

Compiler's Comments

1983 Amendment: In (8), inserted "operating in this state" and "or hold an interest in such business".

33-17-204. Licensing of organizations — requisites. (1) A partnership or corporation may be licensed as an insurance agent. Each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation, personally engaged in this state in soliciting or negotiating insurance policies, shall be registered with the commissioner in conjunction with the partnership or corporation license and shall qualify as an individual. An additional license fee shall be paid for each individual registered in conjunction with the partnership or corporation license.

(2) A license shall not be issued to a partnership or corporation unless the transaction of business under the license is within the purposes stated in the partnership agreement or the articles of incorporation.

(3) The partnership or corporate licensee shall promptly notify the commissioner of each change relative to the individuals designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969; R.C.M. 1947, 40-3310; amd. Sec. 1, Ch. 345, L. 1979.

33-17-205. Licensing of resident agents' association — fee — powers — revocation. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability any association of licensed Montana insurance agents, whether or not incorporated, formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission thereon.

(3) Application for the license shall be made in the name of the association by its duly constituted president and secretary, and the license may be issued to the association in its name alone.

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees

with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only and without notice to the individual officers or members of the association, revoke the license if he finds that continuation thereof is not in the public interest or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969; R.C.M. 1947, 40-3311.

33-17-206. Appointment and licensing of solicitors — limitations. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed, except that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or countersign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969; R.C.M. 1947, 40-3321.

33-17-207 through 33-17-210 reserved.

33-17-211. Application for license. (1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner must designate and prepare forms for application for license which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal

history, business record, experience and training in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application must be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application must also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; and whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708.

History: En. Sec. 156, Ch. 286, L. 1959; amd. Sec. 19, Ch. 535, L. 1975; R.C.M. 1947, 40-3312; amd. Sec. 20, Ch. 198, L. 1979; amd. Sec. 2, Ch. 345, L. 1979.

Cross-References

Persons authorized to acknowledge documents, Title 1, ch. 5, part 2.

33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner, except that the provisions of this subsection (5)(b) do not apply to title agents, as defined in 33-25-105;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) mechanical breakdown insurance agents.

History: En. Sec. 157, Ch. 286, L. 1959; amd. Sec. 11, Ch. 44, L. 1969; R.C.M. 1947, 40-3313; amd. Sec. 3, Ch. 345, L. 1979; amd. Sec. 1, Ch. 211, L. 1981; amd. Sec. 18, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3)(h); in (5)(b) at end, inserted exception clause; and deleted former (5)(g) that read: "title insurance agents".

1981 Amendment: Added subsection (5)(h) (now (5)(g)).

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Licensing reciprocity, 33-17-401.

Montana Title Insurance Act, Title 33, ch. 25.

33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at a place in this state reasonably accessible to the applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions.

History: En. Sec. 158, Ch. 286, L. 1959; amd. Sec. 1, Ch. 156, L. 1969; R.C.M. 1947, 40-3314; amd. Sec. 21, Ch. 198, L. 1979; amd. Sec. 19, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (5).

33-17-214. Issuance of license — contents. (1) The commissioner shall promptly issue the license applied for to the person qualified therefor in accordance with this chapter. There is a license for life or disability insurance and a separate license for kinds of insurance other than life or disability.

(2) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, kind of insurance covered, and such other information as the commissioner considers proper.

(3) The license of a partnership or corporation shall also state the name of each individual authorized to exercise the license powers.

(4) The license of a solicitor shall state the name and address of the agent to be represented.

History: En. Sec. 159, Ch. 286, L. 1959; R.C.M. 1947, 40-3315; amd. Sec. 4, Ch. 345, L. 1979.

33-17-215. Repealed. Sec. 14, Ch. 345, L. 1979.

History: En. Sec. 160, Ch. 286, L. 1959; R.C.M. 1947, 40-3316.

33-17-216. Temporary agent licenses — fee. (1) The commissioner may issue a temporary license as agent to or with respect to an individual qualified therefor only as to age, residence, and trustworthiness and without requiring such individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of such administrator or executor, of a licensed agent upon such agent's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed agent disabled by injury or physical or mental illness;

(c) to an employee of a firm, or officer or employee of a corporation, licensed as agent, upon the death or disability of an individual designated in the license to exercise the powers thereof;

(d) to the designee of a licensed agent entering upon active service in the armed forces of the United States of America.

(2) The temporary license shall be issued upon application filed with the commissioner in such form and containing such information as the commissioner may reasonably require and upon payment of the applicable fee as stated in 33-2-708.

(3) The temporary license shall be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that such a license issued pursuant to subsection (1)(a) may be continued without payment of an additional fee until the executor or administrator disposes of the insurance business but not to exceed a period of 15 months. A temporary license issued to the next of kin under such subsection (1)(a) may not be extended for an additional term after the appointment and qualification of such an administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.

History: En. Sec. 163, Ch. 286, L. 1959; R.C.M. 1947, 40-3319; amd. Sec. 27, Ch. 198, L. 1979; amd. Sec. 5, Ch. 345, L. 1979.

33-17-217. Limitations and rights under temporary license. (1) The commissioner shall not issue more than one temporary license, to or with respect to the same individual to be so licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the agent thereby being replaced was licensed.

(3) As to a temporary agent's license issued on account of the death or disability of an agent, the licensee may so represent all of the insurers last represented by such deceased or disabled agent and without the making of new appointment of such licensee by such insurers, but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(4) A temporary licensee shall have the same license powers and duties as under a permanent license.

History: En. Sec. 164, Ch. 286, L. 1959; R.C.M. 1947, 40-3320.

33-17-218. Continuance and expiration of licenses. (1) All solicitor and adjuster licenses shall continue in force until expired, suspended, revoked, or terminated but subject to payment to the commissioner annually on or before May 1 of the applicable renewal fee as stated in 33-2-708, accompanied by written request for renewal. A request for renewal of a solicitor's license shall be signed by the agent by whom the licensee is employed.

(2) The license of an agent shall continue in force subject to the provisions of 33-17-231 and, unless suspended or revoked, as long as there is in effect as to such agent, as shown by the commissioner's records, an appointment as agent of an authorized insurer, covering all of the kinds of insurance included in the agent's license. Upon termination of all of the agent's agency appointments for a particular kind of insurance and failure to secure and file with the commissioner a new appointment for such kind of insurance within 90 days thereafter, the agent's license shall automatically terminate as to such kind of insurance.

(3) This section shall not apply to temporary licenses issued under 33-17-216.

History: **En. Sec. 172, Ch. 286, L. 1959; amd. Sec. 13, Ch. 44, L. 1969; R.C.M. 1947, 40-3328; amd. Sec. 2, Ch. 344, L. 1979; amd. Sec. 6, Ch. 345, L. 1979.**

Cross-References

Revocation and suspension of licenses, 33-17-1001.

33-17-219 and 33-17-220 reserved.

33-17-221. Licensing insurance vending machines as solicitors. (1) A licensed resident agent may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machine supervised by him and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(b) the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in defective machines and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such machine to be so used, the commissioner shall issue to the agent a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be so sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall be as stated in 33-2-708 for each license year or part thereof for each respective vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use in such manner as the commissioner may reasonably require.

History: **En. Sec. 166, Ch. 286, L. 1959; R.C.M. 1947, 40-3322.**

Cross-References
Suspension and revocation of licenses, 33-17-1001.

33-17-222 through 33-17-230 reserved.

33-17-231. Appointment of agents — continuation and termination. (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708.

(2) Subject to annual continuation by the insurer not later than May 31, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all agents whose appointments in this state are not to remain in effect.

(4) Subject to the agent's contract rights, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause thereof. Any information or statement contained in the notice of termination shall be privileged and shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination.

History: En. Sec. 161, Ch. 286, L. 1959; R.C.M. 1947, 40-3317; amd. Sec. 3, Ch. 344, L. 1979; amd. Sec. 7, Ch. 345, L. 1979.

33-17-232. Rights of agent following termination of appointment. (1) Following termination of any such agency appointment as to property, casualty, or surety insurance and subject to the terms of any agreement between the agent and the insurer, the agent may continue to service and receive from the insurer commissions or other compensation relative to business written by him for the insurer during the existence of the appointment.

(2) This section does not apply as to agents of direct writing insurers or agents or insurers between whom the relationship of employer and employee exists.

History: En. Sec. 162, Ch. 286, L. 1959; R.C.M. 1947, 40-3318.

Part 3

Adjusters

Part Cross-References
Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

33-17-301. Adjuster's license — qualifications — catastrophe adjustments. (1) No person shall in this state act as or hold himself out to be an adjuster unless then licensed therefor under this chapter. Application for license shall be made to the commissioner according to forms as prescribed and furnished by him. The commissioner shall issue the license as to individuals qualified therefor upon payment of the license fee stated in 33-2-708.

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) must be an individual 18 years of age or more;

(b) must be a resident in and of Montana or resident of another state which will permit residents of Montana regularly to act as adjusters in such other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or must have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;

(d) must be of good character and reputation;

(e) must have and maintain in this state an office accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of such office in the home of the licensee.

(3) A firm or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is separately licensed or is named in the firm or corporation license and is qualified as for an individual license as adjuster. An additional full license fee shall be paid as to each individual in excess of one so named in the firm or corporation license to exercise its powers.

(4) No such adjuster's license or qualifications shall be required as to any adjuster who is sent into this state by and on behalf of an insurer or adjusting firm or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all such losses.

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971; R.C.M. 1947, 40-3327.

Part 4

Nonresident Licensees

33-17-401. Nonresident agent — reciprocity. The commissioner may license as an agent a person, partnership, or corporation otherwise qualified under this code but not a resident of this state if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969; R.C.M. 1947, 40-3333; amd. Sec. 8, Ch. 345, L. 1979.

33-17-402. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: **En. Sec. 2, Ch. 44, L. 1969; R.C.M. 1947, 40-3334.**

33-17-403. Nonresident agent required to be licensed in state of residence — limited to insurers represented — certification. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: **En. Sec. 3, Ch. 44, L. 1969; R.C.M. 1947, 40-3335.**

33-17-404. Countersigning coverage of residents. Except as provided in 33-17-1111, a nonresident agent shall not sign or countersign policies covering subjects of insurance located or to be performed in Montana.

History: **En. Sec. 4, Ch. 44, L. 1969; R.C.M. 1947, 40-3336; amd. Sec. 9, Ch. 345, L. 1979; amd. Sec. 1, Ch. 395, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted exception clause at beginning of section and deleted former last sentence, which read: "Except as provided in 33-17-1111, these policies must be countersigned by a licensed resident agent."

33-17-405. Service of process — commissioner as agent. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney-in-fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of $5. The commissioner shall then promptly forward a copy of the service by registered or certified mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: **En. Sec. 5, Ch. 44, L. 1969; R.C.M. 1947, 40-3337.**

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-17-406. Nonresident agent subject to insurance code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: **En. Sec. 6, Ch. 44, L. 1969; R.C.M. 1947, 40-3338.**

33-17-407. Nonresident licensee to pay taxes — annual report required. (1) A nonresident licensee is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks located or to be performed in Montana.

(2) A nonresident licensee shall make a written report to the commissioner annually within 45 days following the end of each calendar year. The

report must contain a listing of all business written on subjects or risks located or performed in Montana. The report must be in a form prescribed by the commissioner and must include but not be limited to a listing of company, policy number, premium earned, and commission earned.
History: **En. Sec. 3, Ch. 395, L. 1983.**

Cross-References
Premium tax imposed on policy issued through nonresident licensee, 33-2-710.

33-17-408 through 33-17-410 reserved.

33-17-411. Penalty. A nonresident licensee who violates any condition of his Montana license or any provision of this part is subject to a fine by the commissioner of up to $50,000 for each such violation and may, at the discretion of the commissioner, have his Montana nonresident license revoked or suspended for a period of up to 5 years.
History: **En. Sec. 5, Ch. 395, L. 1983.**

Part 5

Consultants

Part Cross-References
Hearings on decisions of Commissioner, 33-1-313.
Former criminal offenders — considerations in licensing, 37-1-203.

33-17-501. Short title. This part may be cited as "The Montana Insurance Consultant Licensure Act".
History: **En. 40-3339 by Sec. 1, Ch. 144, L. 1975; R.C.M. 1947, 40-3339.**

33-17-502. Prohibition on holding out as consultant — receiving fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity;

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; or

(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation insurance fund as provided in 33-18-212.

History: En. 40-3340, 40-3348 by Secs. 2, 10, Ch. 144, L. 1975; R.C.M. 1947, 40-3340, 40-3348; amd. Sec. 2, Ch. 86, L. 1979.

33-17-503. Application — fee — expiration. (1) Before an insurance consultant's license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50.

(2) Every consultant's license shall expire on May 31 next following the date of issue.

History: En. 40-3341 by Sec. 3, Ch. 144, L. 1975; R.C.M. 1947, 40-3341.

33-17-504. Issuing license — limitations. The commissioner may issue an insurance consultant's license to any natural person who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221 through 33-1-229, as specified in such license.

History: En. 40-3342 by Sec. 4, Ch. 144, L. 1975; R.C.M. 1947, 40-3342; amd. Sec. 13, Ch. 467, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and 33-1-221 through 33-1-229" after "33-1-212"; and made minor changes in phraseology.

33-17-505. Qualification — fee. (1) In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries or require the applicant to pass an examination.

(2) The fee for taking such an examination shall be $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination shall be no more than the cost of administering such examination, not to exceed $50.

History: En. 40-3343 by Sec. 5, Ch. 144, L. 1975; amd. Sec. 1, Ch. 146, L. 1977; R.C.M. 1947, 40-3343.

33-17-506. Grounds for refusal to issue license. The commissioner may refuse to issue an insurance consultant's license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant or has given cause for revocation or suspension of a license or has failed to comply with any prerequisite for the issuance of a license.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part).

33-17-507. Revocation. The commissioner may revoke or suspend any insurance consultant's license for a period he determines if, after notice and hearing as specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of his dealings as a consultant;

(2) has made a material misstatement in application for a consultant's license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part).

Cross-References

Hearings by Commissioner, 33-1-313.

33-17-508 through 33-17-510 reserved.

33-17-511. Consideration for services only on written memorandum. No person licensed as an insurance consultant under this part may receive any fee for examining, appraising, reviewing, or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. A copy of every memorandum or contract shall be retained by the licensee for not less than 3 years after those services have been fully performed.

History: En. 40-3345 by Sec. 7, Ch. 144, L. 1975; R.C.M. 1947, 40-3345.

33-17-512. Limitation on type of consideration. No person licensed as an insurance consultant may receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for any person to whom any licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months.

History: En. 40-3346 by Sec. 8, Ch. 144, L. 1975; R.C.M. 1947, 40-3346.

33-17-513. Restrictions on insurers recommended by licensee. No person licensed as an insurance consultant under this part may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

History: En. 40-3347 by Sec. 9, Ch. 144, L. 1975; R.C.M. 1947, 40-3347.

Part 6

Administrators

33-17-601. Administrator defined. As used in this part, the term "administrator" means any person, corporation, partnership, or association who collects charges or premiums from residents of this state in connection with life or health insurance coverage or annuities or who adjusts or settles claims on such coverage but does not include:

(1) an employer on behalf of its employees or on behalf of the employees of one or more subsidiary or affiliated corporations of such employer;

(2) a union on behalf of its members;

(3) an insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or health service corporation as defined in 33-30-101;

(4) a life or health agent who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(5) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(6) a trust established in conformity with 29 U.S.C. 186, its trustees, or agents and employees acting thereunder;

(7) a trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, or employees acting thereunder;

(8) a custodian acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code or its agents and employees;

(9) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(11) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

History: En. Sec. 1, Ch. 343, L. 1979.

33-17-602. Written agreement required. (1) No person may act as an administrator without a written agreement between the person and the insurer. The written agreement shall be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement shall contain provisions which include the requirements of 33-17-605 and 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement shall contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by such insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

History: En. Sec. 2, Ch. 343, L. 1979.

33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, no person may act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner of insurance shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for an insurance license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of $100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, any administrator who acts as such without the certificate of registration is subject to a fine of not less than $500 or more than $1,500.

History: En. Sec. 12, Ch. 343, L. 1979.

Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

33-17-604. Waiver of certification requirements. The commissioner of insurance may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting such waiver shall include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

History: En. Sec. 13, Ch. 343, L. 1979.

33-17-605. Bonding requirements. Every administrator shall be bonded. The amount of the bond shall be not less than 10% of the amount of total funds handled and not less than $1,000, but need not be more than $500,000 unless a larger amount has been agreed to between the insurer and the administrator. For fixing the amount of the bond, the amount of funds handled shall be determined by the total funds handled by the administrator during the preceding year or, if no funds were handled during the preceding year, the amount of funds reasonably estimated to be handled during the current calendar year by the administrator. The bond shall provide protection to the insurer or insurers against loss by reason of acts of fraud or dishonesty and may include individual bonds or schedule or blanket forms of bonds. Only one bond shall be required of the administrator for all insureds which utilize the services of the administrator, unless provided otherwise in the written agreement between the insurer and the administrator.

History: **En. Sec. 10, Ch. 343, L. 1979.**

Cross-References

Suretyship — bonding, Title 28, ch. 11, part 4; Title 33, ch. 26.

33-17-606 through 33-17-610 reserved.

33-17-611. Maintenance of information. For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner of insurance shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except that the commissioner may use such information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator.

History: **En. Sec. 3, Ch. 343, L. 1979.**

33-17-612. Approval of advertising. An administrator may use only such advertising pertaining to the business underwritten by an insurer as is approved by the insurer in advance of its use.

History: **En. Sec. 4, Ch. 343, L. 1979.**

33-17-613. Collection of charges and premiums. (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers and return premiums received from such insurer or insurers are held by the administrator in a fiduciary capacity. These funds shall be immediately remitted to the person or persons entitled thereto or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator shall not pay any claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled thereto;

(b) deposit in an account maintained in the name of such insurer;

(c) transfer to and deposit in a claims paying account, with claims to be paid as provided in 33-17-615;

(d) payment to a group policyholder for remittance to the insurer entitled thereto;

(e) payment to the administrator of its commission, fees, or charges; or

(f) remittance of return premiums to the person or persons entitled thereto.

History: En. Sec. 5, Ch. 343, L. 1979.

Cross-References

Fiduciary duty, Title 72, ch. 20, part 2.

33-17-614. Treatment of payments. Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in 33-17-602, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to be received by the insurer and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

History: En. Sec. 6, Ch. 343, L. 1979.

33-17-615. Payment of claims. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

History: En. Sec. 7, Ch. 343, L. 1979.

33-17-616. Delivery of documents. Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so.

History: En. Sec. 8, Ch. 343, L. 1979.

33-17-617. Claim adjustment and settlement. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

History: En. Sec. 9, Ch. 343, L. 1979.

33-17-618. Insured persons to be notified of availability of administrator. Whenever the services of an administrator are utilized, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship between the administrator, the policyholder, and the insurer. Whenever an administrator collects funds, the administrator shall identify and state, separately in writing, to the person paying to the administrator any charge or premium for insurance coverage the amount of such charge or premium specified by the insurer for the insurance coverage.

History: En. Sec. 11, Ch. 343, L. 1979.

Parts 7 through 9 reserved

Part 10

Revocation, Suspension, and Penalties

33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus line agent license if, after hearing held on not less than 20 days' advance notice by registered or certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

History: En. Sec. 173, Ch. 286, L. 1959; R.C.M. 1947, 40-3329; amd. Sec. 6, Ch. 395, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1), inserted "Except as provided in 33-17-411".

Cross-References

Termination of criminal's supervision — restoration of rights, Art. II, sec. 28, Mont. Const.

Revocation of surplus line agent's license, 33-2-313.

Former criminal offenders — considerations in licensing, 37-1-203.

Felony — definition, 45-2-101.

33-17-1002. Procedure following suspension or revocation. (1) Upon suspension or revocation of any such license the commissioner shall forthwith notify the licensee thereof either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurers represented by the agent, in the case of an agent's license, and to the agent by whom appointed in the case of a solicitor's license.

(2) Suspension or revocation of the license of an agent shall automatically revoke or suspend the licenses of all solicitors appointed by him.

(3) The commissioner shall not again issue a license under this code to or as to any person whose license has been revoked until after expiration of 1 year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice shall not again be eligible for any license under this code.

(4) If the license of a firm or corporation is so suspended or revoked, no member of such firm or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

History: En. Sec. 174, Ch. 286, L. 1959; R.C.M. 1947, 40-3330.

33-17-1003. Return of license. (1) All licenses issued under this chapter, although issued and delivered to the licensee agent, solicitor, or adjuster, shall at all times be the property of the state of Montana. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the commissioner either by personal delivery or by mail.

(2) As to any license lost, stolen, or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the license the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft, or destruction.

History: En. Sec. 175, Ch. 286, L. 1959; R.C.M. 1947, 40-3331.

33-17-1004. Acting as insurance agent, solicitor, or adjuster without license — penalty. Except as provided in 33-17-411, a person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be fined $500 or imprisoned in the county jail for 90 days, or both.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967; R.C.M. 1947, 40-3332; amd. Sec. 22, Ch. 198, L. 1979; amd. Sec. 7, Ch. 395, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of section, substituted "Except as provided in 33-17-411, a" for "Any".

Part 11

Conduct of Business by Agents

33-17-1101. Place of business — display of license — records. (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216.

History: En. Sec. 167, Ch. 286, L. 1959; R.C.M. 1947, 40-3323; amd. Sec. 10, Ch. 345, L. 1979; amd. Sec. 20, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: In (3) at end, inserted "except that title agents, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216".

33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. Except for a title agent as defined in 33-25-105, if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law.

History: En. Sec. 168, Ch. 286, L. 1959; amd. Sec. 51, Ch. 359, L. 1977; R.C.M. 1947, 40-3324; amd. Sec. 21, Ch. 519, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning of second sentence, inserted "Except for a title agent as defined in 33-25-105".

Cross-References

Trust/fiduciary duties, Title 72, ch. 20, part 2.

33-17-1103. Exchange of business — sharing commissions. (1) An agent may, occasionally only, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under this chapter and appointed by the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage.

(3) No agent or solicitor shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transactions, except as provided in 33-17-1113. This provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm or corporation or use of funds for family or personal purposes.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under 33-2-306 or as to life or disability insurance placed as provided in 33-17-1104.

History: En. Sec. 169, Ch. 286, L. 1959; R.C.M. 1947, 40-3325; amd. Sec. 11, Ch. 345, L. 1979.

33-17-1104. Life or disability agent authorized to place excess or rejected business. A life or disability insurance agent may from time to time place excess or rejected risks in any other life or disability insurer authorized to transact insurance in this state, with the knowledge and approval of the insurer or insurers as to which the agent is so licensed, and may receive a commission thereon without being required to have a license as to such other insurer.

History: En. Sec. 170, Ch. 286, L. 1959; R.C.M. 1947, 40-3326.

33-17-1105 through 33-17-1110 reserved.

33-17-1111. Resident agent required — reciprocity — countersignature — records. (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless:

(a) the policy is written through a licensed agent, resident in Montana, of the insurer;

(b) the policy is written through a licensed nonresident agent and, if a countersignature would be required by the resident state of the nonresident agent upon a Montana resident agent writing business in the resident state of such nonresident agent, the policy or countersignature endorsement attached thereto is countersigned by a Montana resident licensed agent; or

(c) the policy is written through a licensed nonresident agent who is a resident of a state that does not require countersignatures.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization so long as the initials of such employee are written below the agent's name on such countersignature, but the agent shall not thereby delegate or have power to delegate to any other person the power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

(3) This section shall not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident thereto;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured.

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963; R.C.M. 1947, 40-2822; amd. Sec. 12, Ch. 345, L. 1979; amd. Sec. 2, Ch. 395, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b), after "through a" inserted "licensed"; after "nonresident agent and" inserted ", if a counter signature would be required by the resident state of the nonresident agent upon a Montana resident agent writing business in the resident state of such nonresident agent"; near end of (1)(b), after "countersigned by a" inserted "Montana"; inserted (1)(c).

33-17-1112. Salaried personnel not to countersign — exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed agent of the insurer resident in Montana, whose compensation as such agent is by commission computed as a percentage of the premium received on each such policy written, shall have power to countersign as required by 33-17-1111.

(2) No branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation therefrom is in whole or in part by salary, shall have power to countersign such policies or countersignature endorsements thereto; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident agent of the insurer having power to execute the policy is then reasonably available, then any other individual having authority therefor from the insurer may execute such policy in the first instance in order to make a contract between the insurer and the obligee or the insured if such policy is subsequently countersigned in fact by such a resident agent.

History: En. Sec. 68, Ch. 286, L. 1959; R.C.M. 1947, 40-2823.

33-17-1113. Policies originating outside state — commission of resident agent. (1) As to policies or endorsements thereto which are subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, there shall be payable to the countersigning agent, resident in Montana, a commission which shall not be less than 5% of the premium charged and received but not to exceed 50% of the commission paid by the insurer, so that a record within Montana will be kept of such business and that the state may better receive any tax required by law to be paid with respect to such insurance. If, however, the originating agent or broker or the insurer desires additional service to be rendered during the term of the policy, then the compensation for such countersigning resident agent shall be in such additional amount as is fixed by mutual agreement of such parties in interest.

(2) If pursuant to the laws of another state the countersigning agents of that state retain as commission or compensation with respect to business originated by Montana agents more than 5% of the premium, then Montana agents who countersign policies representing business originated by agents or brokers of such other state shall charge and receive a commission in amount not less than that so received by countersigning agents of the other state.

History: En. Sec. 69, Ch. 286, L. 1959; R.C.M. 1947, 40-2824.

33-17-1114. Policies issued at home or branch offices. Nothing in 33-17-1111 through 33-17-1113 shall prevent any insurer from issuing any policy, as to which the resident agent or countersignature requirement of 33-17-1111 is applicable, at its home or branch office, but such policies shall be subsequently countersigned, where otherwise required, by its agent resident in Montana. The insurer's licensed agent resident in Montana shall receive the commission on such policy when the premium is paid. This section does not apply as to life insurance.

History: En. Sec. 70, Ch. 286, L. 1959; R.C.M. 1947, 40-2825.

CHAPTER 18

UNFAIR TRADE PRACTICES

Part 1 — General Provisions

Section

33-18-101. Purposes.
33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew.

Part 2 — Insurer's Relations With Insured

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33-18-202. Misrepresentation and false advertising of policies prohibited.
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Part 10 — Enforcement

33-18-1001. Complaint handling — record.
33-18-1002. Power of commissioner to examine insurers.
33-18-1003. Undefined unfair practices — procedures for determining and restraining.
33-18-1004. Desist orders for prohibited practices.
33-18-1005. Penalty for violation of cease and desist orders.

Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Personal solicitation sales — exemption for insurance sales, 30-14-502.

Part 1

General Provisions

33-18-101. Purposes. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in P.L. 79-15, which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew. (1) No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization, including a mutual insurer formed to provide insurance to the members of an association or organization, from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance.

History: En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502; amd. Sec. 2, Ch. 319, L. 1981; amd. Sec. 1, Ch. 143, L. 1983.

Compiler's Comments

1983 Amendment: In middle of (2), after "organization" inserted "including a mutual insurer formed to provide insurance to the members of an association or organization".

1981 Amendment: Added subsection (2).

Part 2

Insurer's Relations With Insured

33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: **En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.**

Cross-References

Administrative penalty for failure to pay promptly — determination by Commissioner whether delay is general course of business practice, 33-18-232.

Lack of good faith in handling or settlement of claim, 33-18-241.

33-18-202. Misrepresentation and false advertising of policies prohibited. No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which:

(1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

(4) is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(6) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7) misrepresents any insurance policy as being shares of stock.

History: **En. Sec. 205, Ch. 286, L. 1959; R.C.M. 1947, 40-3503; amd. Sec. 1, Ch. 9, L. 1979.**

33-18-203. False or deceptive advertising prohibited. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

History: **En. Sec. 206, Ch. 286, L. 1959; R.C.M. 1947, 40-3504.**

Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

33-18-204. Twisting prohibited. No person shall make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange, or convert any insurance policy.

History: **En. Sec. 207, Ch. 286, L. 1959; R.C.M. 1947, 40-3505.**

33-18-205. Filing or publishing false financial statements or making false entries prohibited. (1) No person shall file with any supervisory or other public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer. Any person who aids or abets in any such violation of this section shall be punishable upon conviction by a fine of $1,000 or by imprisonment in the county jail for 6 months or both such fine and imprisonment.

History: En. Sec. 208, Ch. 286, L. 1959; amd. Sec. 1, Ch. 29, L. 1967; R.C.M. 1947, 40-3506.

Cross-References

Unsworn falsification to authorities — misdemeanor, 45-7-203.

Misdemeanor — definition, 46-18-212.

33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

History: En. Sec. 211, Ch. 286, L. 1959; R.C.M. 1947, 40-3509.

33-18-207. Preferred rates to fictitious groups prohibited — approval of preferred group rates and forms. (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory and as not otherwise being in conflict with subsection (1) above or with any provision of parts 1 through 4 of

chapter 16 to the extent that parts 1 through 4 are, by their terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of chapter 16, part 10.

History: **En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977; R.C.M. 1947, 40-3520.**

33-18-208. Contract to contain agreements — rebates prohibited — life, disability, and annuity contracts. Except as otherwise expressly provided by law, no person shall knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value whatsoever not specified in the contract.

History: **En. Sec. 212, Ch. 286, L. 1959; R.C.M. 1947, 40-3510.**

33-18-209. Exceptions to discrimination and rebates provision. Nothing in 33-18-206 and 33-18-208 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer;

(2) in the case of life insurance policies issued on the industrial debit, preauthorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense;

(3) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) reduction of premium rate for policies of large amount but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

(5) issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

History: En. Sec. 213, Ch. 286, L. 1959; R.C.M. 1947, 40-3511.

33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) No title, property, casualty, or surety insurer or any employee, representative, agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy or any employee of the insured may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

(3) No such insurer may make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) No such insurer may make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) No such insurer may make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) No such insurer may refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual, but an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) No such insurer may terminate or modify coverage or refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; however, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection is not to be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977; R.C.M. 1947, 40-3512; amd. Sec. 19, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (5) through (8).

33-18-211. Stock operations and advisory board contracts. No person shall issue or deliver or permit its agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

History: En. Sec. 215, Ch. 286, L. 1959; R.C.M. 1947, 40-3513.

33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) No person shall willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus line agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 ½% of the annual premium, for placement through the state compensation insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section shall be punishable under 33-1-104.

History: En. Sec. 221, Ch. 286, L. 1959; R.C.M. 1947, 40-3519; amd. Sec. 1, Ch. 86, L. 1979.

33-18-213. Extension of credit to policyholder. Notwithstanding any other provision of law, an insurance agent, as defined in 33-17-102, may extend credit to a policyholder in connection with the issuance or servicing of any policy procured or negotiated by the agent, but any credit so extended must satisfy one of the following requirements:

(1) if credit is extended to a policyholder for not more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, no interest may be charged; or

(2) if credit is extended to a policyholder for more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not more than 1 ½% a month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument signed by the policyholder, any interest charged for such credit shall be clearly stated in the instrument and may not exceed the legal rate of interest authorized in 31-1-107.

History: **En. Sec. 1, Ch. 128, L. 1981.**

33-18-214 through 33-18-230 reserved.

33-18-231. State administrative process to provide timely payment of medical benefits — definitions. In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

(2) "Proof of loss" means any document accepted by an insurer upon which payment of benefits is made.

History: **En. Sec. 1, Ch. 300, L. 1983.**

33-18-232. Time for payment of claims. (1) If within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer.

(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18%

a year from the date the commissioner determines that the delay became unreasonable.

History: **En. Sec. 2, Ch. 300, L. 1983.**

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) on an insurer if he finds that the insurer as a general course of business practice in this state fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; or

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether such claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to such third person, or in favor of any other person entitled to the benefits of a policy.

(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation.

(3) If an insurer can demonstrate that it has consistently paid 90% of the total amount outstanding in claims within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2).

History: **En. Sec. 3, Ch. 300, L. 1983.**

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-234. Right of privacy guaranteed. Nothing in 33-18-231 through 33-18-235 requires the commissioner to disclose information in violation of the Insurance Information and Privacy Protection Act.

History: **En. Sec. 4, Ch. 300, L. 1983.**

Cross-References

Insurance information and privacy protection, Title 33, ch. 19.

33-18-235. Rulemaking authority. The commissioner shall make rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234.

History: **En. Sec. 5, Ch. 300, L. 1983.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-18-236 through 33-18-240 reserved.

33-18-241. Separation of trial of claim for lack of good faith from trial of underlying claim. The trial of a claim or action against an insurer for lack of good faith in its handling or settlement of an insurance claim may not be consolidated with a trial of the underlying claim if:

(1) the lack of good faith claim is against a party different from the party against whom the underlying claim is made; and

(2) the parties have not stipulated to consolidation of the trial of the lack of good faith claim and the underlying claim.

History: En. Sec. 1, Ch. 504, L. 1985.

Compiler's Comments

Applicability: Section 3, Ch. 504, L. 1985, provided: "This act applies to actions filed on or after the effective date of this act [October 1, 1985] against insurers for lack of good faith in handling or settlement of claims."

Cross-References

Consolidation — separate trials, Rule 42, M.R.Civ.P. (see Title 25, ch. 20).

Unfair claim settlement practices prohibited, 33-18-201.

Part 3

Insurers — Noninsurance-Related Prohibitions

33-18-301. Prohibited relations with mortuaries. (1) No life insurer may own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business in Montana.

(2) No life insurer may contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral or be named beneficiary of any person insured by such insurer. This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.

(3) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 223, Ch. 286, L. 1959; R.C.M. 1947, 40-3521; amd. Sec. 23, Ch. 198, L. 1979; amd. Sec. 1, Ch. 229, L. 1981.

Compiler's Comments

1981 Amendment: Added "in Montana" at the end of (1); inserted "or be named beneficiary" after "or mortuary shall conduct the funeral" in (2); added the last sentence of (2) allowing funeral insurance.

Cross-References

Morticians — general provisions, Title 37, ch. 19, part 1.

Misdemeanor — definition, 46-18-212.

33-18-302. Defaming insurer prohibited. No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

History: En. Sec. 209, Ch. 286, L. 1959; R.C.M. 1947, 40-3507.

Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

33-18-303. Boycott, coercion, or intimidation prohibited. No person shall enter into any agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

History: **En. Sec. 210, Ch. 286, L. 1959; R.C.M. 1947, 40-3508.**

Cross-References

Restraint of trade, 30-14-205.

Intimidation — criminal offense, 45-5-203.

33-18-304. Interlocking ownership and management — restrictions. (1) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers or have a common management with any other insurer or insurers unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

History: **En. Sec. 219, Ch. 286, L. 1959; R.C.M. 1947, 40-3517.**

Cross-References

Affiliation and merger — holding company systems, Title 33, ch. 2, part 11.

33-18-305. Political contributions prohibited — penalty. (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization or for or in aid of any corporation or other body organized or maintained for political purposes or for or in aid of any candidate for political office or for nomination for such office or for any political purpose whatsoever or for the reimbursement or indemnification of any person for money or property so used.

(2) Any officer, director, stockholder, attorney, or agent of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than $1,000; and any officer or director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

History: **En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518.**

Cross-References

Prohibited contributions from corporations, 13-35-227.

Campaign finance, Title 13, ch. 37, part 2.

Misdemeanor, 46-18-212.

Part 4

Insured's Relations With Insurer

33-18-401. False applications, claims, and proofs of loss — penalty. Any solicitor, agent, examining physician, applicant, or other person who knowingly or willfully makes any false or fraudulent statement or representation in or with reference to any application for insurance or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

History: **En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522.**

Part 5

Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring agent prohibited. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent or solicitor or group of agents or solicitors.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, solicitor, or agent pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser, information taken at a time other than the making of the loan or extension of credit relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) require any procedures or conditions of licensed agents, solicitors, or insurers not customarily required of those agents, solicitors, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1.

Cross-References

Property insurance, Title 33, ch. 24.

Parts 6 through 9 reserved

Part 10

Enforcement

33-18-1001. Complaint handling — record. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

History: En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.2.

Cross-References

Lack of good faith in handling or settlement of claim, 33-18-241.

33-18-1002. Power of commissioner to examine insurers. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History: **En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.3.**

33-18-1003. Undefined unfair practices — procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

(2) If such report charges a violation of this chapter and if such method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just, but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof, including all evidence taken and the report and findings, shall be received in evidence in such action.

(3) If the commissioner's report made under subsection (1) above or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

History: **En. Sec. 217, Ch. 286, L. 1959; R.C.M. 1947, 40-3515.**

Cross-References

Attorney General — duties, 2-15-501.
Injunctions, Title 27, ch. 19.
Hearings by Commissioner, 33-1-701.
Appeals from Commissioner, 33-1-711.

33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders if no such appeal is taken or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in 33-18-1003(3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

History: En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.

Cross-References

General penalty — Montana Insurance Code violations, 33-1-104.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's orders, 33-1-711.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-18-1005. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 33-18-1004 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a $10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.1.

Cross-References

Attorney General — duties, 2-15-501.

County Attorneys — duties, 7-4-2716.

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

CHAPTER 19

INSURANCE INFORMATION AND PRIVACY PROTECTION

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Part 1

General Provisions

33-19-101. Short title. This chapter may be cited as the "Insurance Information and Privacy Protection Act".

History: En. Sec. 1, Ch. 580, L. 1981.

33-19-102. Purpose. The purpose of this chapter is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

History: En. Sec. 2, Ch. 580, L. 1981.

33-19-103. Scope. (1) The obligations imposed by this chapter apply to those insurance institutions, agents, or insurance-support organizations that, on or after July 1, 1982:

(a) in the case of life, health, or disability insurance:

(i) collect, receive, or maintain information in connection with insurance transactions that pertains to natural persons who are residents of this state; or

(ii) engage in insurance transactions with applicants, individuals, or policyholders who are residents of this state; and

(b) in the case of property or casualty insurance:

(i) collect, receive, or maintain information in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; or

(ii) engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(2) The rights granted by this chapter extend to:

(a) in the case of life, health, or disability insurance, the following persons who are residents of this state:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions; and

(b) in the case of property or casualty insurance, the following persons:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(3) For the purposes of this section, a person is considered a resident of this state if the person's last-known mailing address, as shown in the records of the insurance institution, agent, or insurance-support organization, is located in this state.

(4) This chapter does not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

History: En. Sec. 3, Ch. 580, L. 1981.

33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or agent of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution which specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis; or

(ii) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Agent" means an agent or enrollment representative as defined in 33-17-102 and 33-30-311.

(4) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(5) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in connection with an insurance transaction.

(6) "Consumer reporting agency" means any person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(7) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(8) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(9) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(10) "Institutional source" means a person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than:

(a) an agent;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(11) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101. "Insurance institution" does not include agents or insurance-support organizations.

(12) (a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: agents, government institutions, insurance institutions, medical care institutions, and medical professionals.

(13) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion thereof containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

(15) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(16) "Medical professional" means a person licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech therapist.

(17) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(20) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone he is not;

(b) pretends to represent a person he is not in fact representing;

(c) misrepresents the true purpose of the interview; or

(d) refuses to identify himself upon request.

(22) "Privileged information" means any individually identifiable information that:

(a) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection will be considered "personal information" under this chapter if it is disclosed in violation of 33-19-306.

(23) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state.

History: En. Sec. 4, Ch. 580, L. 1981.

Part 2

Information Gathering

33-19-201. Pretext interviews prohibited — exception. (1) Except as provided in subsection (2), an insurance institution, agent, or insurance-support organization may not use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction.

(2) A pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim when based upon specific information available for review by the commissioner that there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

History: En. Sec. 5, Ch. 580, L. 1981.

33-19-202. Notice of insurance information practices. (1) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice shall be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice is required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice is required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), (13), and (15) of 33-19-306 and the circumstances under which such disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

History: **En. Sec. 6, Ch. 580, L. 1981.**

33-19-203. Marketing and research surveys. An insurance institution or agent shall clearly specify the questions that are designed to obtain information from an individual in connection with an insurance transaction solely for marketing or research purposes.

History: **En. Sec. 7, Ch. 580, L. 1981.**

33-19-204. Content and disclosure of authorization forms. Notwithstanding any other provision of law of this state, an insurance institution, agent, or insurance-support organization may not utilize as its disclosure authorization form in connection with insurance transactions a form or statement that authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance-support organization unless the form or statement:

(1) is written in plain language;

(2) is dated;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time such authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

History: En. Sec. 8, Ch. 580, L. 1981.

33-19-205. Investigative consumer reports. (1) An insurance institution, agent, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or agent informs the individual:

(a) that he may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to 33-19-301, he is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or agent desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interview, if requested.

History: En. Sec. 9, Ch. 580, L. 1981.

Part 3

Disclosure of Information

33-19-301. Access to recorded personal information. (1) If an individual, after proper identification, submits a written request to an insurance institution, agent, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent, or insurance-support organization, the insurance institution, agent, or insurance-support organization shall, within 30 business days from the date such request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, agent, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent, or insurance-support organization has disclosed the personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations, or other persons to whom such information is normally disclosed; and

(d) provide the individual with a summary of the procedures he may use to request correction, amendment, or deletion of recorded personal information.

(2) Personal information provided pursuant to subsection (1) must identify the source of the information if such source is an institutional source.

(3) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, agent, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and at the request of the affected individual shall consult with the affected individual.

(4) Except for personal information provided under 33-19-303, an insurance institution, agent, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(5) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, agent, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(6) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to

and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(7) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

History: En. Sec. 10, Ch. 580, L. 1981.

33-19-302. Correction, amendment, or deletion of recorded personal information. (1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend, or delete any recorded personal information in its possession about the individual, an insurance institution, agent, or insurance-support organization shall either:

(a) correct, amend, or delete the portion of the recorded personal information in dispute; or

(b) notify the individual of:

(i) its refusal to make such correction, amendment, or deletion;

(ii) the reasons for the refusal; and

(iii) the individual's right to file a statement as provided in subsection (3).

(2) If the insurance institution, agent, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance institution, agent, or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment, or fact of deletion to:

(a) any person specifically designated by the individual who may have, within the preceding 2 years, received such recorded personal information;

(b) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding 7 years, but the correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(c) any insurance-support organization that furnished the personal information which has been corrected, amended, or deleted.

(3) Whenever an individual disagrees with an insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual may file with the insurance institution, agent, or insurance-support organization:

(a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and

(b) a concise statement of the reasons why the individual disagrees with the insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.

(4) If an individual files either statement described in subsection (3), the insurance institution, agent, or insurance-support organization shall:

(a) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of individual's statement and have access to it;

(b) in any subsequent disclosure by the insurance institution, agent, or insurance-support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(c) furnish the statement to the persons in the manner specified in subsection (2).

(5) The rights granted individuals by this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or insurance-support organization in connection with an insurance transaction. The rights granted to natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(6) For the purposes of this section, the term "insurance-support organization" does not include consumer reporting agency.

History: En. Sec. 11, Ch. 580, L. 1981.

33-19-303. Reasons for adverse underwriting decisions. (1) If an adverse underwriting decision is made, the insurance institution or agent responsible for the decision shall:

(a) either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he may receive the specific reason or reasons in writing; and

(b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (2) and 33-19-301 and 33-19-302.

(2) If a written request is received within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance institution or agent shall within 21 business days from the date of receipt of the written request furnish the person:

(a) the specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (1)(a);

(b) the specific items of personal and privileged information that support those reasons; however:

(i) the insurance institution or agent is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(ii) specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers; and

(c) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (2)(b), except that the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or agent prefers.

(3) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(4) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (1) may be given orally.

History: En. Sec. 12, Ch. 580, L. 1981.

33-19-304. Information concerning previous adverse underwriting decisions. An insurance institution, agent, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual unless the inquiry also requests the reasons for any previous adverse underwriting decision and the individual is advised of the source of the information; or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests the reasons why insurance coverage was previously obtained through a residual market mechanism and the individual is advised of the source of information.

History: En. Sec. 13, Ch. 580, L. 1981; amd. Sec. 8, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), after "individual" inserted "unless" clause; and in (2) after "requests" deleted "the reasons for any previous adverse underwriting decision or" and inserted clause at end after "mechanism".

33-19-305. Previous adverse underwriting decisions. An insurance institution or agent may not base an adverse underwriting decision in whole or in part:

(1) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism, but an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision;

(2) on personal information received from an insurance-support organization whose primary source of information is insurance institutions, but an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

History: En. Sec. 14, Ch. 580, L. 1981.

33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, an insurance institution, agent, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; and

(iii) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:

(a) to enable such person to perform a business, professional, or insurance function for the disclosing insurance institution, agent, or insurance-support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(i) would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or

(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization; or

(b) to enable such person to provide information to the disclosing insurance institution, agent, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, agent, insurance-support organization, or self-insurer if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, agent, or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority.

(7) Disclosure may be made to a law enforcement or other government authority:

(a) to protect the interests of the insurance institution, agent, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, agent, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure may be made as otherwise permitted or required by law.

(9) Disclosure may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) Disclosure may be made for the purpose of conducting actuarial or research studies, provided:

(a) no individual may be identified in any actuarial or research report;

(b) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(c) the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, agent, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization.

(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:

(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.

(13) Disclosure may be made to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(14) Disclosure may be made by a consumer reporting agency to a person other than an insurance institution or agent.

(15) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(16) Disclosure may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

(17) Disclosure may be made to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(18) Disclosure may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

History: En. Sec. 15, Ch. 580, L. 1981.

Part 4

Enforcement

33-19-401. Power of the commissioner. (1) The commissioner has the power to examine and investigate the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this chapter.

(2) The commissioner has the power to examine and investigate the affairs of every insurance-support organization acting on behalf of an insurance institution or agent that either transacts business in this state or transacts business outside this state which has an effect on a person residing in this state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this chapter.

History: **En. Sec. 16, Ch. 580, L. 1981.**

33-19-402. Hearings. The commissioner shall hold a hearing whenever he has reason to believe that an insurance institution, agent, or insurance-support organization has been or is engaged in conduct in this state that violates this chapter or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this chapter. Hearings conducted under this section are governed by Title 2, chapter 4 and Title 33, chapter 1, part 7.

History: **En. Sec. 17, Ch. 580, L. 1981.**

33-19-403. Service of process — insurance-support organizations. For the purpose of this chapter, an insurance-support organization transacting business outside this state that has an effect on a person residing in this state is considered to have appointed the commissioner to accept service of process on its behalf. The commissioner shall mail a copy of the notice by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner.

History: **En. Sec. 18, Ch. 580, L. 1981.**

33-19-404. Hearing determination. (1) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, agent, or insurance-support organization charged has engaged in conduct or practices in violation of this chapter, the commissioner shall reduce his findings and conclusions to writing and shall issue and cause them to be served upon the insurance institution, agent, or insurance-support organization as provided by law.

(2) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, agent, or insurance-support organization charged has not engaged in conduct or practices in violation of this chapter, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. The report shall be served upon the insurance institution, agent, or insurance-support organization charged and upon the

person or persons if any, whose rights under this chapter were allegedly violated, in the manner provided by law for service of agency orders.

History: En. Sec. 19, Ch. 580, L. 1981.

33-19-405. Civil penalties. If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of this chapter, the commissioner may order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations.

History: En. Sec. 20, Ch. 580, L. 1981; amd. Sec. 4, Ch. 101, L. 1985.

Compiler's Comments

1985 Amendment: After "the commissioner may", deleted "in addition to the issuance of a cease and desist order as prescribed in 33-19-404"; and deleted former (2) that read: "Any person who violates a cease and desist order of the commissioner under 33-19-404 may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(a) a civil penalty of not more than $10,000 for each violation; or

(b) a civil penalty of not more than $50,000 if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; and

(c) suspension or revocation of an insurance institution's or agent's license."

33-19-406. Judicial review of orders and reports. Any person subject to an order of the commissioner under 33-1-706 or 33-19-405 or any person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711.

History: En. Sec. 21, Ch. 580, L. 1981; amd. Sec. 5, Ch. 101, L. 1985.

Compiler's Comments

1985 Amendment: Substituted "33-1-706" for "33-19-404".

33-19-407. Individual remedies. (1) If any insurance institution, agent, or insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect to the rights granted under those sections, any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, agent, or insurance-support organization that discloses information in violation of 33-19-306 is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of 33-19-306.

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter.

History: En. Sec. 22, Ch. 580, L. 1981.

33-19-408. Immunity. A cause of action or claim for relief in the nature of defamation, invasion of privacy, or negligence does not arise against any person for disclosing personal or privileged information in accordance with this chapter, nor does such a cause of action or claim for relief arise against any person for furnishing personal or privileged information to an insurance institution, agent, or insurance-support organization. However, this section does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

History: **En. Sec. 23, Ch. 580, L. 1981.**

33-19-409. Obtaining information under false pretenses. Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or insurance-support organization under false pretenses shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

History: **En. Sec. 24, Ch. 580, L. 1981.**

CHAPTER 20

LIFE INSURANCE

Part 1 — Policy Provisions

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Chapter Cross-References

Assignments for benefit of creditors — exemption for general assignment, 31-2-227.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Life insurance — defined, 33-1-208.

Part 1

Policy Provisions

Part Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-20-101. Scope. Parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

History: En. Sec. 295, Ch. 286, L. 1959; R.C.M. 1947, 40-3801; amd. Sec. 149, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "Parts 1 through 5" for "Parts 1 through 4".

Cross-References

Accidental death incidental to casualty insurance, 33-1-206.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

Group life insurance, Title 33, ch. 20, parts 10 through 12.

33-20-102. Industrial life insurance defined. For the purposes of this code, industrial life insurance is that form of life insurance written under policies of face amount of $2,000 or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969; R.C.M. 1947, 40-3802.

Cross-References

Attachment of application — exception, 33-15-402.

33-20-103. Standard provisions required — exceptions. (1) No policy of life insurance other than group and pure endowments with or without return of premiums or of premiums and interest shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-116.

(2) This section shall not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(3) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

History: En. Sec. 297, Ch. 286, L. 1959; R.C.M. 1947, 40-3803.

33-20-104. Grace period. There shall be a provision that a grace period of 30 days or, at the option of the insurer, of 1 month of not less than 30 days or of 4 weeks in the case of industrial life insurance policies, the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; but if a claim arises under the policy during such period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds.

History: En. Sec. 298, Ch. 286, L. 1959; R.C.M. 1947, 40-3804.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-105. Incontestability. There shall be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

History: En. Sec. 299, Ch. 286, L. 1959; R.C.M. 1947, 40-3805.

33-20-106. Entire contract. There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties and, if the application is so made a part of the policy, that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

History: En. Sec. 300, Ch. 286, L. 1959; R.C.M. 1947, 40-3806.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Interpretation of written contracts — Statute of Frauds, Title 28, ch. 2, part 9.

Representations and warranties — applications other than life insurance, 33-15-403.

33-20-107. Misstatement of age. There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

History: En. Sec. 301, Ch. 286, L. 1959; R.C.M. 1947, 40-3807.

33-20-108. Dividends. (1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy, provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

(a) payable in cash; or

(b) applied to any one of such other dividend options as may be provided by the policy.

(3) If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable.

(4) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2)(a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(5) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

(6) In participating industrial life insurance policies, in lieu of the provision required in subsections (1) through (5) above, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

History: En. Sec. 302, Ch. 286, L. 1959; R.C.M. 1947, 40-3808.

Cross-References

Standard nonforfeiture law — life insurance, Title 33, ch. 20, part 2.

Standard nonforfeiture law — individual deferred annuities, Title 33, ch. 20, part 5.

33-20-109. Renumbered 33-20-131 by Code Commissioner, 1985.

33-20-110. Table of values. There shall be a table showing in figures the loan value, if required under 33-20-131, and the cash surrender values and nonforfeiture benefits in accordance with 33-20-202(1)(e), either during the first 20 policy years or during the term of the policy, whichever is shorter.

History: En. Sec. 304, Ch. 286, L. 1959; R.C.M. 1947, 40-3810.

33-20-111. Table of installments. In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

History: En. Sec. 305, Ch. 286, L. 1959; R.C.M. 1947, 40-3811.

33-20-112. Reinstatement. There shall be a provision that the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, with interest on all premiums in arrears at a rate not exceeding 6% per annum compounded annually and with interest on any indebtedness at a rate as provided in 33-20-132 through 33-20-136, unless:

(1) the policy has been surrendered for its cash surrender value;

(2) its cash surrender value has been exhausted; or

(3) the paid-up term insurance, if any, has expired.

History: En. Sec. 306, Ch. 286, L. 1959; R.C.M. 1947, 40-3812; amd. Sec. 7, Ch. 191, L. 1985.

Compiler's Comments

1985 Amendment: Near end of introductory clause inserted "on all premiums in arrears" and "and with interest on any indebtedness at a rate as provided in 33-20-132 through 33-20-136".

33-20-113. Payment of premiums. There shall be a provision relative to the payment of premiums.

History: En. Sec. 307, Ch. 286, L. 1959; R.C.M. 1947, 40-3813.

33-20-114. Payment of claims — interest. (1) There shall be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement shall be made upon receipt of proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant.

(2) There shall be a provision, which may be made by endorsement, that settlement be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement shall include interest from the 30th day until settlement. Interest shall be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer after October 1, 1985, regardless of whether those provisions are included in the policy.

History: En. Sec. 308, Ch. 286, L. 1959; R.C.M. 1947, 40-3814; amd. Sec. 1, Ch. 469, L. 1985.

Compiler's Comments

1985 Amendment: In (1), at beginning substituted "There shall be a provision, which may be made by endorsement, that when a claim is made upon the death" for "There shall be a provision that when a policy shall become a claim by the death" and at end deleted last sentence that read: "If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed 2 months from the receipt of such proofs"; and inserted (2).

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to pay claims promptly, 33-18-232 through 33-18-235.

33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the

policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the personal representative of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy.

(5) The provisions of 33-20-114(2) shall be incorporated into an industrial life insurance policy and are applicable as set out in that subsection.

History: En. Sec. 309, Ch. 286, L. 1959; R.C.M. 1947, 40-3815; amd. Sec. 150, Ch. 575, L. 1981; amd. Sec. 2, Ch. 469, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (5).

1981 Amendment: Substituted "personal representative" for "executor or administrator" in (3).

33-20-116. Title. There shall be a title on the policy, briefly describing the same.

History: En. Sec. 310, Ch. 286, L. 1959; R.C.M. 1947, 40-3816.

33-20-117. Nonforfeiture rights — policies issued before operative date. (1) This section shall apply only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured, without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the insurer of such policy, less 2 ½% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid.

History: En. Sec. 326, Ch. 286, L. 1959; R.C.M. 1947, 40-3832.

33-20-118. Contestability — excluded or restricted coverage. A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

History: En. Sec. 311, Ch. 286, L. 1959; R.C.M. 1947, 40-3817.

33-20-119. Incontestability — limitation on liability after reinstatement of life insurance or annuity. (1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability might have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

History: **En. Sec. 322, Ch. 286, L. 1959; R.C.M. 1947, 40-3828.**

33-20-120. Policy settlements — holding proceeds — indebtedness deducted from proceeds. (1) Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

(2) In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

(a) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy; and

(b) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

History: **En. Secs. 323, 324, Ch. 286, L. 1959; R.C.M. 1947, 40-3829, 40-3830.**

33-20-121. Prohibited provisions — limitations on liability. (1) No policy of life insurance may be delivered or issued for delivery in this state if it contains any of the following provisions:

(a) a provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy;

(b) a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(i) death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of such war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(ii) death as a result of aviation or any air travel or flight;

(iii) death as a result of a specified hazardous occupation or occupations;

(iv) death while the insured is a resident outside the continental United States and Canada; or

(v) death within 2 years from the date of issue of the policy as a result of suicide, while seriously mentally ill or otherwise.

(2) A policy which contains any exclusion or restriction pursuant to subsection (1) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) Nothing contained in this section prohibits any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

History: En. Sec. 320, Ch. 286, L. 1959; R.C.M. 1947, 40-3826; amd. Sec. 28, Ch. 198, L. 1979.

33-20-122. Prohibited provisions — industrial life insurance. No policy of industrial life insurance shall contain any of the following provisions:

(1) a provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer;

(2) a provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical, or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within 2 years prior to the issuance of the policy, received institutional, hospital, medical, or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk;

(3) a provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

History: En. Sec. 321, Ch. 286, L. 1959; R.C.M. 1947, 40-3827.

33-20-123. Prohibited policy plans — life insurance policies or annuity contracts. (1) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group or under any other similar plan.

(2) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision

shall not be deemed to prohibit the payment or allowance of regular annual dividends or "savings" under participating forms of policies or contracts or prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders, or mortality either in general or as resulting from particular classifications of policies.

History: **En. Sec. 327, Ch. 286, L. 1959; R.C.M. 1947, 40-3833.**

33-20-124 through 33-20-130 reserved.

33-20-131. Policy loan. (1) Except as provided in 33-20-132 through 33-20-136, there shall be a provision that after 3 full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of such policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy loans, higher investment yield resulting from a reduction in policy loans because of the higher policy loan interest rate, and any additional income to the company resulting from the use of such higher interest rate in any manner whatsoever. These benefits to the policyholder shall be reflected through higher dividends or lower premiums, or both. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(2) This section shall not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies.

History: **En. Sec. 303, Ch. 286, L. 1959; R.C.M. 1947, 40-3809; amd. Sec. 1, Ch. 179, L. 1979; amd. Sec. 6, Ch. 191, L. 1985; Sec. 33-20-109, MCA 1983; redes. 33-20-131 by Code Commissioner, 1985.**

Compiler's Comments

1985 Amendment: Inserted exception at beginning.

33-20-132. Variable policy loan interest rates — purpose. The purpose of 33-20-132 through 33-20-136 is to permit and set guidelines for life insurers to include in life insurance policies issued after October 1, 1985, a provision for periodic adjustment of policy loan interest rates.

History: **En. Sec. 1, Ch. 191, L. 1985.**

33-20-133. Variable interest rates — exclusions from application. The provisions of 33-20-132 through 33-20-136 do not apply to:

(1) term policies;

(2) term insurance benefits provided by rider or supplemental policy provisions; or

(3) industrial life insurance policies except as provided in 33-20-112.

History: **En. Sec. 2, Ch. 191, L. 1985.**

33-20-134. Variable interest rates — published monthly average defined. For purposes of 33-20-132 through 33-20-136, the "published monthly average" means:

(1) Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, incorporated; or

(2) in the event that Moody's corporate bond yield average—monthly average corporates is no longer published, a substantially similar average, established by rule of the commissioner.

History: **En. Sec. 3, Ch. 191, L. 1985.**

33-20-135. Variable interest rates on policy loans. (1) (a) Life insurance policies issued on or after October 1, 1985, may have a provision permitting policy loan interest rates as follows:

(i) a maximum interest rate of not more than 8% a year; or

(ii) an adjustable maximum interest rate established from time to time by the life insurer as permitted by 33-20-132 through 33-20-136.

(b) A life insurer is not permitted to issue policies containing variable rates of interest on policy loans under subsection (1)(a)(ii) unless the insurer also makes available policies, which may or may not be on the same plan of insurance, with fixed rates of interest on policy loans under subsection (1)(a)(i).

(2) The rate of interest charged on a policy loan made under subsection (1)(a)(ii) may not exceed the greater of:

(a) the published monthly average for the calendar month ending 2 months before the date on which the rate is determined; or

(b) the rate used to compute the cash surrender values under the policy during the applicable period plus 1% a year.

(3) If the maximum rate of interest is determined pursuant to subsection (1)(a)(ii), the policy must contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(4) The maximum rate for each policy must be determined at regular intervals that must occur at least once every 12 months, but may not occur more frequently than once in any 3-month period. At the intervals specified in the policy, the rate being charged:

(a) may be increased whenever an increase as determined under subsection (2) would increase the rate by 0.5% or more a year;

(b) must be reduced whenever a reduction as determined under subsection (2) would decrease the rate by 0.5% or more a year.

(5) The life insurer shall:

(a) notify the policyholder of the initial rate of interest on the loan at the time a cash loan is made;

(b) notify the policyholder, with respect to premium loans, of the initial rate of interest on the loan as soon as practical after making the initial loan. Notice does not have to be given to the policyholder when a further premium loan is added, except as provided in subsection (5)(c).

(c) send reasonable advance notice of any increase in the rate to policyholders with loans; and

(d) include in the notices required by this subsection (5) the substance of subsection (1) and the frequency of rate determinations as provided in subsection (3).

(6) The policy may provide that if interest on any indebtedness is not paid when due, the interest will be added to the existing indebtedness and will bear interest at the same rate as the indebtedness.

(7) The loan value of the policy must be determined in accordance with the provisions of 33-20-131, but no policy may be terminated in a policy year solely as a result of a change in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until the time at which the policy would otherwise have terminated if there had been no interest rate change during that policy year.

(8) The substance of the pertinent provisions of subsections (1) and (3) must be set forth in the policies to which they apply.

(9) For purposes of this section, the following definitions apply:

(a) "Policy loan" includes any premium loan made under a policy used to pay one or more premiums that were not paid to the life insurer as they became due. The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after the lapse of a policy.

(b) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(c) "Policy" includes certificates issued by a fraternal benefit society and annuity contracts that provide for policy loans.

(10) No other provision of law applies to policy loan interest rates unless it is made specifically applicable to such rates.

History: En. Sec. 4, Ch. 191, L. 1985.

33-20-136. Variable interest rates — applicability to policies issued before October 1985. The provisions of 33-20-132 through 33-20-135 do not apply to any insurance contract issued before October 1, 1985, unless the policyholder agrees in writing to the applicability of such provisions.

History: En. Sec. 5, Ch. 191, L. 1985.

33-20-137 through 33-20-140 reserved.

33-20-141. Notice required for cancellation. No insurer may cancel a life insurance policy or annuity for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last-known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with the grace period required by 33-20-104.

History: **En. Sec. 1, Ch. 723, L. 1985.**

33-20-142. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its agent, the policy will lapse or be forfeited, except as to any nonforfeiture options provided for by a life insurance policy.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or agent of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from the due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-20-141 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: **En. Sec. 2, Ch. 723, L. 1985.**

Part 2

Standard Nonforfeiture Law Life Insurance

Part Cross-References

Nonforfeiture rights — applicable to policies issued prior to effective date of part, 33-20-117.

33-20-201. Short title. This part shall be known as the "Standard Nonforfeiture Law for Life Insurance".

History: **En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(1); amd. Sec. 5, Ch. 346, L. 1979.**

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-20-202. Nonforfeiture provisions. (1) In the case of policies issued on or after the operative date of this part as defined in 33-20-213, no policy of life insurance, except as set forth in 33-20-212, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this section and are essentially in compliance with 33-20-210:

(a) that in the event of default in any premium payment after premiums have been paid for at least 1 full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this part. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) that upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part;

(c) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default;

(d) that if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be specified in this part;

(e) for a policy that has on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provides an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. For each other policy a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state;

(g) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy;

(h) if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and

(i) a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(2) Any of the provisions or portions thereof set forth in subsections (1)(a) through (1)(i) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(2), (3); amd. Sec. 1, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: In (1) at end of introductory clause, inserted language following "policyholder"; in (1)(a) near end of first sentence changed "value" to "amount" and inserted second sentence; and inserted first sentence of (1)(e) and "For each other policy" at beginning of second sentence.

33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life. (1) Except as provided in subsection (2), any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-208 corresponding to premiums which would have fallen due on and after such anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) For any policy issued on or after the operative date of 33-20-208 that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined

in subsection (1) for a policy that provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part in the absence of the conditions that premiums shall have been paid for at least a specified period.

(5) For any family policy issued on or after the operative date of 33-20-208 that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such term insurance on the life of the spouse.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(4), (5); amd. Sec. 2, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of (1), inserted exception clause; in (1)(a), changed "through 33-20-207" to "through 33-20-208"; and inserted (2) and (5).

33-20-204. Adjusted premium. (1) This section does not apply to policies issued on or after the operative date of 33-20-208.

(2) (a) Except as provided in subsection (3), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 2% of the amount of the insurance if the insurance be uniform in amount or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(iii) 40% of the adjusted premium for the first policy year;

(iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(b) In applying the percentages specified in subsections (iii) and (iv) above, no adjusted premiums shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto.

(c) Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(d) (i) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsections (a) and (b) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(ii) In the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(3) (a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance.

(b) The foregoing items (a)(i) and (a)(ii) being calculated separately and as specified in subsection (2) except that, for the purposes of (ii), (iii), and (iv) of subsection (2), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (a)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a)(i) of this subsection.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(6), (7), (7-a); amd. Sec. 3, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1).

33-20-205. Calculation — mortality table — rates of interest. Except as otherwise provided in 33-20-206 and 33-20-207:

(1) All adjusted premiums and present values referred to in this part shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table.

(2) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table.

(3) All calculations shall be made on the basis of the rate of interest, not exceeding 3 ½% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8).

33-20-206. Mortality tables — policies issued after operative date. (1) This section does not apply to ordinary policies issued on or after the operative date of 33-20-208.

(2) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-a); amd. Sec. 6, Ch. 346, L. 1979; amd. Sec. 4, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1).

33-20-207. Industrial policies — mortality tables. (1) This section does not apply to industrial policies issued on or after the operative date of 33-20-208.

(2) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 ½% per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-b); amd. Sec. 7, Ch. 346, L. 1979; amd. Sec. 5, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1).

33-20-208. Mortality tables — interest rate adjusted premiums. (1) (a) This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted premiums for any policy are calculated on an annual basis and must be such a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(iii) 125% of the nonforfeiture net level premium as provided in subsection (2). No nonforfeiture net level premium is considered to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values are initially calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(a) the sum of:

(i) the then present value of the then future guaranteed benefits provided for by the policy; and

(ii) the additional expense allowance, if any; over

(b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and

(b) 125% of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the product of subsection (a) by the product of subsection (b):

(a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy;

(b) the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) Except as provided below, all adjusted premiums and present values referred to in this part are for policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values for policies of industrial insurance are calculated on the basis of the commissioner's 1961 standard industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in this subsection for policies issued in that calendar year; with the following exceptions and conditions:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables set forth in this subsection (8).

(f) Any ordinary mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(g) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2, part 5, rounded to the nearer ¼ of 1%.

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative date of this section for such insurer. If an insurer makes no such election, the operative date of this section for such insurer is January 1, 1989.

History: En. Sec. 6, Ch. 498, L. 1983.

33-20-209. Determination of nonforfeiture values for special plans. For a plan of life insurance that provides for future premium determination the amounts of which are to be determined by the insurer based on then estimates of future experience or for a plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in 33-20-204 through 33-20-208:

(1) the commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by 33-20-204 through 33-20-208;

(2) the commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this part, as determined by rules promulgated by the commissioner.

History: En. Sec. 7, Ch. 498, L. 1983.

33-20-210. Additional rules for calculating cash surrender values. (1) This section, in addition to all other applicable sections of this chapter, applies to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy upon default in a premium payment due on any policy anniversary is an amount that does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years subtracted from the sum of:

(a) the greater of zero and the basic cash value specified in subsection (2); and

(b) the present value of any existing paid-up additions less the amount of any indebtedness to the insurer under the policy.

(2) The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the insurer, if there had been no default less the then present value of the nonforfeiture factors, as provided in subsection (3), corresponding to premiums that would have fallen due on and after such anniversary date. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in 33-20-203 or 33-20-204, whichever is applicable, are the same as the effects specified in 33-20-203 or 33-20-204, whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in 33-20-204 or 33-20-208, whichever is applicable. Except as is required by subsection (4), the percentage:

(a) must be the same percentage for each policy year between the second policy anniversary date and the later of the fifth policy anniversary date and the first policy anniversary date at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) must be such that no percentage after the later of the two policy anniversary dates specified in subsection (3)(a) applies to less than 5 consecutive policy years.

(4) No basic cash value may be less than the value that would be obtained if the adjusted premiums for the policy, as provided in 33-20-204 or 33-20-208, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(5) Adjusted premiums and present values referred to in this section must, for a particular policy, be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this part. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

(6) A cash surrender value available other than upon default in a premium payment due on a policy anniversary date and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment are determined consistently with provisions specified for determining the analogous minimum amounts in 33-20-202 through 33-20-204, 33-20-208, and 33-20-211. The amounts of any cash surrender values and of

any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in 33-20-211(4) must conform with the principles of this section.

History: En. Sec. 9, Ch. 498, L. 1983.

33-20-211. Calculation of values — other requisites. (1) Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values referred to in 33-20-203 through 33-20-208 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

(3) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions.

(4) Notwithstanding the provisions of subsections (1) and (3) of 33-20-203, additional benefits payable under the following circumstances shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this part, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(a) in the event of death or dismemberment by accident or accidental means;

(b) in the event of total and permanent disability;

(c) as reversionary annuity or deferred reversionary annuity benefits;

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part would not apply;

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid up by reason of the death of a parent of the child; and

(f) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(9); amd. Sec. 8, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: In (2), changed "through 33-20-207" to "through 33-20-208"; in (3) substituted "amounts" for "dividends"; and in (4) substituted "(3) of 33-20-203" for "(2) of 33-20-203".

33-20-212. Exceptions. (1) This part does not apply to:

(a) reinsurance;

(b) group insurance;

(c) a pure endowment;

(d) an annuity or reversionary annuity contract;

(e) a term policy of uniform amount that provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71 for which uniform premiums are payable during the entire term of the policy;

(f) a term policy of decreasing amount that provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in 33-20-204 through 33-20-208, is less than the adjusted premiums so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(g) a policy which provides no guaranteed nonforfeiture or endowment benefits for which the cash surrender value, if any, or present value of any paid-up nonforfeiture benefit at the beginning of any policy year, calculated as specified in 33-20-203 through 33-20-208, does not exceed 2.5% of the amount of insurance at the beginning of the same policy year;

(h) a policy that is delivered outside this state through an agent or other representative of the insurer issuing the policy.

(2) For purposes of subsection (1), the age at expiry for a joint term life insurance policy is the age at expiry of the oldest life.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(10); amd. Sec. 10, Ch. 498, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(e), after "uniform amount" inserted "that provides no guaranteed nonforfeiture or endowment benefits,", changed "15" to "20", and changed "66" to "71"; in (1)(f), after "decreasing amount" inserted "that provides no guaranteed nonforfeiture or endowment benefits,", changed "through 33-20-207" to "through 33-20-208", before "policy" inserted "term", after "policy" inserted "of uniform amount . . . endowment benefits,", substituted remainder of sentence after "insurance" for "for a term defined as follows"; deleted former subsections (1) and (2), which read: "(1) For ages at issue 50 and under, the term shall be 15 years. (2) Thereafter the term shall decrease 1 year for each year of age beyond 50."; and inserted subsections (1)(g), (1)(h), and (2).

33-20-213. Operative date. After July 1, 1945, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this part, except 33-20-206 and 33-20-207, after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this part, except 33-20-206 and 33-20-207, shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this part, except 33-20-206 and 33-20-207, with respect to such policies and contracts for such insurer is January 1, 1948.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(11); amd. Sec. 24, Ch. 198, L. 1979.

Cross-References

Contracts prior to operative date, 33-2-522.

Contracts on or after this operative date, 33-2-523.

Part 3

Annuity Contract Provisions

33-20-301. Standard provisions — annuity and pure endowment contracts. (1) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in 33-20-302 through 33-20-307. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(2) This section shall not apply to contracts for deferred annuities included in or upon the lives of beneficiaries under life insurance policies.

History: En. Sec. 312, Ch. 286, L. 1959; R.C.M. 1947, 40-3818.

33-20-302. Grace period. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that there shall be a period of grace of 1 month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding 6% per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

History: En. Sec. 313, Ch. 286, L. 1959; R.C.M. 1947, 40-3819.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-303. Incontestability. If any statements other than those relating to age, sex, and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to 33-20-305, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

History: En. Sec. 314, Ch. 286, L. 1959; R.C.M. 1947, 40-3820.

33-20-304. Entire contract. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

History: En. Sec. 315, Ch. 286, L. 1959; R.C.M. 1947, 40-3821.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Statute of Frauds — interpretation of written contracts, Title 28, ch. 2, part 9.

33-20-305. Misstatement of age or sex. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

History: **En. Sec. 316, Ch. 286, L. 1959; R.C.M. 1947, 40-3822.**

33-20-306. Dividends. If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

History: **En. Sec. 317, Ch. 286, L. 1959; R.C.M. 1947, 40-3823.**

33-20-307. Reinstatement. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within 1 year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding 6% per annum payable annually. In cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

History: **En. Sec. 318, Ch. 286, L. 1959; R.C.M. 1947, 40-3824.**

Part 4

Reversionary Annuity Contract Provisions

33-20-401. Standard provisions. (1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in 33-20-302 through 33-20-306, except that under 33-20-302 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6% per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

History: En. Sec. 319, Ch. 286, L. 1959; R.C.M. 1947, 40-3825.

Part 5

Standard Nonforfeiture Law Individual Deferred Annuities

33-20-501. Short title. This part shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

History: En. Sec. 8, Ch. 346, L. 1979.

33-20-502. Application. This part does not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity or to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

History: En. Sec. 9, Ch. 346, L. 1979.

33-20-503. Nonforfeiture provisions. In the case of contracts issued on or after the operative date of this part as defined in 33-20-513, no contract of annuity except as stated in 33-20-502 shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in 33-20-506 through 33-20-509 and 33-20-511;

(2) that if a contract provides for a lump-sum settlement at maturity or at any other time, than upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in 33-20-506, 33-20-507, 33-20-509, and 33-20-511. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of 6 months after demand therefor with surrender of the contract.

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits

that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

History: En. Sec. 10, Ch. 346, L. 1979.

33-20-504. Exception. Notwithstanding the requirements of 33-20-503, any deferred annuity contract may provide that if no consideration has been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid prior to such period would be less than $20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

History: En. Sec. 11, Ch. 346, L. 1979.

33-20-505. Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3% a year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 ½% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that

consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 ½% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge shall be the lesser of $30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of $75.

History: **En. Sec. 12, Ch. 346, L. 1979.**

33-20-506. Present value to equal minimum nonforfeiture amount. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

History: **En. Sec. 13, Ch. 346, L. 1979.**

33-20-507. Cash surrender benefits. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. No cash surrender benefit may be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

History: **En. Sec. 14, Ch. 346, L. 1979.**

33-20-508. Paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

History: En. Sec. 15, Ch. 346, L. 1979.

33-20-509. Maturity date. For the purpose of determining the benefits calculated under 33-20-507 and 33-20-508, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is the latest date for which election is permitted by the contract but may not be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

History: En. Sec. 16, Ch. 346, L. 1979.

33-20-510. Statement of noninclusion of certain death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

History: En. Sec. 17, Ch. 346, L. 1979.

33-20-511. Adjusted benefit. Any paid-up annuity, cash surrender, or death benefits available at any time other than on the contract anniversary under any contract with fixed scheduled consideration shall be calculated with allowance for the lapse of time and the payment of any scheduled consideration beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

History: En. Sec. 18, Ch. 346, L. 1979.

33-20-512. Calculation of benefits — special benefits excluded. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross consideration paid with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of 33-20-506 through 33-20-509 and 33-20-511, additional benefits payable in the event of total and permanent disability or as reversionary annuity or deferred reversionary annuity benefits or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amount paid-up annuity, cash surrender, and death benefits.

History: **En. Sec. 19, Ch. 346, L. 1979.**

33-20-513. Operative date. After July 1, 1979, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1981.

History: **En. Sec. 20, Ch. 346, L. 1979.**

Parts 6 through 9 reserved

Part 10

General Requirements for Group Life

33-20-1001. Group contracts required to meet group requirements. (1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in 33-20-1101 through 33-20-1106 and unless in compliance with the other applicable provisions of parts 10 through 12 of this chapter.

(2) Subsection (1) above shall not apply to life insurance policies insuring only individuals:

(a) related by blood, marriage, or legal adoption;

(b) having a common interest through ownership of a business enterprise or a substantial legal interest or equity therein and who are actively engaged in the management thereof; or

(c) otherwise having an insurable interest in each other's lives.

History: **En. Sec. 328, Ch. 286, L. 1959; R.C.M. 1947, 40-3901; amd. Sec. 151, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "33-20-1106" for "33-20-1105" in (1).

33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than five employees at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees.

History: **En. Sec. 349, Ch. 286, L. 1959; R.C.M. 1947, 40-3922.**

33-20-1003. Violations. Violations of parts 10 through 12 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 350, Ch. 286, L. 1959; R.C.M. 1947, 40-3923.

Part 11

Groups and Group Requirements

Part Cross-References

Group disability insurance — same group eligible, 33-22-501.

33-20-1101. Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

History: En. Sec. 329, Ch. 286, L. 1959; R.C.M. 1947, 40-3902.

33-20-1102. Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

History: En. Sec. 330, Ch. 286, L. 1959; R.C.M. 1947, 40-3903.

33-20-1103. Employer and labor union combinations — trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by

the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

History: En. Sec. 331, Ch. 286, L. 1959; R.C.M. 1947, 40-3904.

33-20-1104. Public employee groups. The lives of a group of individuals may be insured under a policy issued to an incorporated city, town, or village or an association or league of cities, towns, or villages, an independent school district, state college or university, any association of state employees, and any association of state, county, and city, town, or village employees and any combination of state, county, or city, town, or village employees and any department of the state or county government, which employer or association shall be deemed the policyholder, to insure the employees of any such incorporated city, town, or village, of any such independent school district, of any such state college and university, or of any such department of the state or county government or members of any association of state, county, or city, town, or village employees, for the benefit of persons other than the policyholder, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include retired employees. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder wholly from funds contributed by it as employer or partly from such funds and

partly from funds contributed by the insured employees or wholly from funds contributed by the insured employees, except that:

(a) the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and

(b) the premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town, or village policyholder when authorized by the charter of such city, town, or village or as otherwise authorized by law.

(3) Such policy may be placed in force only if at least 75% of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(4) The policy must cover at least 10 employees at date of issue.

History: En. Sec. 332, Ch. 286, L. 1959; R.C.M. 1947, 40-3905.

Cross-References

Public employee group insurance, Title 2, ch. 18, parts 7 and 8.

33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965; R.C.M. 1947, 40-3906; amd. Sec. 1, Ch. 617, L. 1985.

Compiler's Comments

1985 Amendment — Applicability: In (1) after "of the creditor" deleted "whose indebtedness is repayable either in installments or in one sum at the end of a period not in excess of 18 months from the initial date of the debt"; and in (4) deleted second sentence that read: "Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of 5 years, except that such insurance may be continued for an additional period not exceeding 6 months in the case of default, extension, or recasting of the loan." Amendment applicable to policies of credit life and disability insurance delivered or issued for delivery on or after October 1, 1985 (sec. 4, Ch. 617, L. 1985).

33-20-1106. Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union organized pursuant to the laws of the state of Montana or the Federal Credit Union Act, which shall be deemed the policyholder, to insure eligible members for amounts of insurance not in excess of the share balance of each member, based upon some plan which will preclude individual selection, for the benefit of someone other than the credit union or its officials and subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all the members of the credit union who meet standard physical requirement conditions of the insurer or all of any class or classes thereof determined by conditions pertaining to their age or to membership in the credit union or both.

(2) The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insured, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at the date of issue.

History: En. Sec. 334, Ch. 286, L. 1959; R.C.M. 1947, 40-3907.

Cross-References

Credit unions — insurance authorized, 32-3-609.

33-20-1107 through 33-20-1110 reserved.

33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or

33-20-1103, may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1), (2), and (3) of 33-20-1209. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

History: En. Sec. 336, Ch. 286, L. 1959; amd. Sec. 1, Ch. 215, L. 1977; R.C.M. 1947, 40-3909; amd. Sec. 25, Ch. 198, L. 1979.

Part 12

Group Contract Provisions

Part Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-20-1201. Provisions required in group contracts. No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in 33-20-1202 through 33-20-1211 or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

(1) sections 33-20-1207 through 33-20-1211 shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

History: **En. Sec. 337, Ch. 286, L. 1959; R.C.M. 1947, 40-3910.**

Cross-References

Nonforfeiture provisions — standard life policies, Title 33, ch. 20, part 2.

33-20-1202. Grace period. The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

History: **En. Sec. 338, Ch. 286, L. 1959; R.C.M. 1947, 40-3911.**

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-1203. Incontestability. The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime or unless it is contained in a written instrument signed by him.

History: **En. Sec. 339, Ch. 286, L. 1959; R.C.M. 1947, 40-3912.**

33-20-1204. Application — statements deemed representations. The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

History: **En. Sec. 340, Ch. 286, L. 1959; R.C.M. 1947, 40-3913.**

Cross-References

Representations and warranties — standard provision regarding applications, 33-15-403.

33-20-1205. Insurability. The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

History: **En. Sec. 341, Ch. 286, L. 1959; R.C.M. 1947, 40-3914.**

33-20-1206. Misstatement of age. The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

History: **En. Sec. 342, Ch. 286, L. 1959; R.C.M. 1947, 40-3915.**

33-20-1207. Payment of benefits. (1) The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(2) The provisions of 33-20-114(2) shall be incorporated into the group life insurance policy and are applicable as set out in that subsection.

History: **En. Sec. 343, Ch. 286, L. 1959; R.C.M. 1947, 40-3916; amd. Sec. 3, Ch. 469, L. 1985.**

Compiler's Comments

1985 Amendment: Inserted (2).

33-20-1208. Certificate. The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211.

History: **En. Sec. 344, Ch. 286, L. 1959; R.C.M. 1947, 40-3917.**

33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy shall contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance, provided application for the individual policy shall be made and the first premium paid to the insurer within 31 days after such termination, and provided further that:

(a) the individual policy shall, at the option of such person, be on any one of the forms, including but not limited to term insurance, if the group policy so provides, then customarily issued by the insurer at the age and for the amount applied for and shall offer benefits at least equal to those under the group coverage;

(b) the individual policy shall, at the option of the insured, be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is insured under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue his coverage under the group policy during his employment notwithstanding reduction of his regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage shall be equal to that charged other members of the group. Such person's coverage under the group will cease if he subsequently becomes eligible for coverage under another group policy because of employment elsewhere.

History: En. Sec. 345, Ch. 286, L. 1959; R.C.M. 1947, 40-3918; amd. Sec. 1, Ch. 579, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "without disability or other supplementary benefits" after "such person shall be entitled to have issued to him by the insured, without evidence of insurability, an individual policy of life insurance" in (1); substituted "including but not limited to term insurance, if the group policy so provides," for "except term insurance," in (1)(a); added "and shall offer benefits at least equal to those under the group coverage" at the end of (1)(a); inserted ", at the option of the insured," after "the individual policy shall" at the beginning of (1)(b); and added subsection (2).

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any

life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; or

(2) $10,000.

History: En. Sec. 346, Ch. 286, L. 1959; R.C.M. 1947, 40-3919; amd. Sec. 2, Ch. 579, L. 1981; amd. Sec. 9, Ch. 518, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), changed "and" to "or".

1981 Amendment: Decreased from 5 years to 3 years the length of time a person must be covered under a group policy to convert the policy on termination; and increased the amount in subsection (2) from $2,000 to $10,000.

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1211. Death pending conversion. The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with 33-20-1209 or 33-20-1210 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

History: En. Sec. 347, Ch. 286, L. 1959; R.C.M. 1947, 40-3920.

33-20-1212. Notice as to conversion right. If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice, but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

History: En. Sec. 348, Ch. 286, L. 1959; R.C.M. 1947, 40-3921.

CHAPTER 21

CREDIT LIFE AND DISABILITY INSURANCE

Part 1 — General Provisions

Section

33-21-101. Short title.
33-21-102. Purpose and scope.

33-21-103. Definitions.
33-21-104. Existing insurance — choice of insurer.
33-21-105. Claims.
33-21-106 through 33-21-110 reserved.
33-21-111. Rules — enforcement of chapter.
33-21-112. Judicial review.
33-21-113. Penalties.

Part 2 — Policy Requirements

33-21-201. Form of issuance.
33-21-202. Amount.
33-21-203. Term.
33-21-204. Policy or certificate delivered — time of delivery — provisions.
33-21-205. Filing, approval, and withdrawal of forms — rates — disapproval.
33-21-206. Premiums and refunds.
33-21-207. Issuance of policies.

Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Commercial banks and savings banks — may sell on loans to borrowers, 32-1-105, 32-1-106.

Part 1

General Provisions

33-21-101. Short title. This chapter may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance".

History: En. Sec. 393, Ch. 286, L. 1959; R.C.M. 1947, 40-4202.

33-21-102. Purpose and scope. (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than 15 years' duration.

History: (1)En. Sec. 392, Ch. 286, L. 1959; Sec. 40-4201, R.C.M. 1947; (2)En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974; Sec. 40-4203, R.C.M. 1947; R.C.M. 1947, 40-4201, 40-4203; amd. Sec. 2, Ch. 617, L. 1985.

Compiler's Comments

1985 Amendment — Applicability: In (2) substituted "15 years' duration" for "10 years' duration". Amendment applicable to policies of credit life and disability insurance delivered or issued for delivery on or after October 1, 1985 (sec. 4, Ch. 617, L. 1985).

Cross-References

Real and personal property — choice by borrower, 33-18-501.

33-21-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction or any successor to the right, title, or interest of such lender, vendor, or lessor.

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

History: En. Sec. 395, Ch. 286, L. 1959; R.C.M. 1947, 40-4204.

33-21-104. Existing insurance — choice of insurer. When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

History: En. Sec. 405, Ch. 286, L. 1959; R.C.M. 1947, 40-4214.

Cross-References

Retail installment sales — choice of insurer provided, 31-1-233.

33-21-105. Claims. (1) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of such claimant to one specified.

(3) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

History: En. Sec. 404, Ch. 286, L. 1959; R.C.M. 1947, 40-4213.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231, 33-18-232, 33-18-235.

33-21-106 through 33-21-110 reserved.

33-21-111. Rules — enforcement of chapter. The commissioner may, after notice and hearing, issue such rules as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules issued pursuant thereto and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

History: En. Sec. 406, Ch. 286, L. 1959; R.C.M. 1947, 40-4215.

Cross-References

General penalty — Montana Insurance Code, 33-1-104.

Promulgation of rules by Commissioner, 33-1-313.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions — stay of order, 33-1-711.

33-21-112. Judicial review. Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in 33-1-711.

History: En. Sec. 407, Ch. 286, L. 1959; R.C.M. 1947, 40-4216.

33-21-113. Penalties. In addition to any penalty provided by law, any person who violates an order of the commissioner after it has become final and while such order is in effect shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250 which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person guilty of such violation. Such order for suspension or revocation shall be subject to judicial review as provided in 33-1-711.

History: En. Sec. 408, Ch. 286, L. 1959; R.C.M. 1947, 40-4217.

Cross-References

Legal actions by state agencies — notification of Attorney General required, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Part 2

Policy Requirements

Part Cross-References

Retail installment sales — general provisions regarding insurance, 31-1-233.

Consumer loans — applicability and limits, 32-5-306.

33-21-201. Form of issuance. Credit life insurance and credit disability insurance shall be issued only in the following forms:

(1) individual policies of life insurance issued to debtors on the term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;

(3) group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage.

History: En. Sec. 396, Ch. 286, L. 1959; R.C.M. 1947, 40-4205.

33-21-202. Amount. (1) The amount of credit life insurance shall be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance, the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding 1 year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall be equal to the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments, provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.

History: En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974; R.C.M. 1947, 40-4206.

Cross-References

Unfair trade practice — failure to promptly pay, 33-18-201.

33-21-203. Term. The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in 33-21-206.

History: En. Sec. 398, Ch. 286, L. 1959; R.C.M. 1947, 40-4207.

33-21-204. Policy or certificate delivered — time of delivery — provisions. (1) All credit life insurance and credit disability insurance sold shall be evidenced by an individual policy or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor at the time the indebtedness is incurred except as hereinafter provided.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the amount of payment by the debtor separately in connection with credit life insurance and credit disability insurance coverage, and a brief description of the coverage provided or to be provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for or notice of proposed insurance shall refer exclusively to insurance coverage and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein. Upon approval of the application, if any, or acceptance of the insurance and within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that, upon acceptance by the insurer, the insurance shall become effective as of the date the indebtedness is incurred.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer and the identity by name or otherwise of the person or persons insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages including any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

History: **En. Secs. 399, 400, Ch. 286, L. 1959; R.C.M. 1947, 40-4208, 40-4209.**

33-21-205. Filing, approval, and withdrawal of forms — rates — disapproval. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders shall be filed with the commission of the state in which the policy is issued.

(2) The commissioner may within 30 days after the filing of all policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders, in addition to other requirements of law, disapprove any such form if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of such policy.

(3) If the commissioner notifies the insurer that the form does not comply with this section, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, notice of

proposed insurance, and no application, binder, endorsement, or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the commissioner gives his prior written approval thereto.

(4) The commissioner may, at any time after a hearing, of which not less than 20 days' written notice was given to the insurer, withdraw his approval of any such form on any of such grounds.

(5) It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal of approval.

(6) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

History: En. Sec. 401, Ch. 286, L. 1959; R.C.M. 1947, 40-4210.

Cross-References

Commissioner to approve forms, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions, 33-1-711.

33-21-206. Premiums and refunds. (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise such schedules from time to time and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by 33-21-205.

(2) Each individual policy, group certificate, or notice of proposed insurance of credit life insurance and credit disability insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of premium due shall be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the commissioner.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967; R.C.M. 1947, 40-4211.

33-21-207. Issuance of policies. All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein and shall be issued only through holders of licenses or authorizations issued by the commissioner.

History: En. Sec. 403, Ch. 286, L. 1959; R.C.M. 1947, 40-4212.

Cross-References

Certificate of authority required, 33-2-101.

CHAPTER 22

DISABILITY INSURANCE

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Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Part 1

General Provisions

33-22-101. Exceptions to scope. Nothing in parts 1 through 4 of this chapter, except 33-22-111 and 33-22-304, shall apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage therein;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or contracts supplemental thereto which contain only such provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard such contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance.

History: En. Sec. 351, Ch. 286, L. 1959; R.C.M. 1947, 40-4001.

Cross-References

Disability coverage incidental to another insurance — exclusion from chapter, 33-1-206.

Definition — disability insurance, 33-1-207.

33-22-102. Third-party ownership. The word "insured", as used in parts 1 through 4 of this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

History: En. Sec. 379, Ch. 286, L. 1959; R.C.M. 1947, 40-4029.

Cross-References

Insurable interest — definition, 33-15-201.

33-22-103. Violations. Violations of parts 1 through 4 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 384, Ch. 286, L. 1959; R.C.M. 1947, 40-4034.

33-22-104 through 33-22-110 reserved.

33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, licensed social worker, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist. An insurer shall offer, at additional cost to the insured, the option of disability and health insurance coverage for services performed by a licensed professional counselor.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: (1)En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971; Sec. 40-4108, R.C.M. 1947; (2)En. Sec. 2, Ch. 172, L. 1967; Sec. 40-4109, R.C.M. 1947; R.C.M. 1947, 40-4108, 40-4109; amd. Sec. 1, Ch. 258, L. 1981; amd. Sec. 20, Ch. 303, L. 1981; amd. Sec. 4, Ch. 324, L. 1981; amd. Sec. 1, Ch. 179, L. 1983; amd. Sec. 1, Ch. 302, L. 1985; amd. Sec. 14, Ch. 572, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 302 near middle of (1) after "psychologist", inserted "licensed social worker".

Chapter 572 in (1) inserted third sentence.

1983 Amendment: Near middle of (1), inserted "or nurse specialist as specifically listed in 37-8-202".

1981 Amendments: Chapter 258 inserted "dentist" after "physician" near the middle of (1).

Chapters 303 and 324 deleted "clinical" before "psychologist" in (1).

Cross-References

Board of Social Work Examiners and Professional Counselors, 2-15-1854.

Licensed medical professions:
  Physicians, Title 37, ch. 3.
  Dentists, Title 37, ch. 4.
  Osteopaths, Title 37, ch. 5.
  Chiropodists (podiatrists), Title 37, ch. 6.
  Pharmacists, Title 37, ch. 7.
  Optometrists, Title 37, ch. 10.
  Chiropractors, Title 37, ch. 12.
  Clinical psychologists, Title 37, ch. 17.
Licensure of social workers, Title 37, ch. 22.
Professional counseling, Title 37, ch. 23.
Workers' Compensation Act, Title 39, ch. 71.
Hospital licensing, Title 50, ch. 5, part 2.

33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the disability insurance policy if rendered to him outside a Montana state institution.

(2) A disability insurance policy is considered issued in Montana if the insured purchasing the disability insurance policy is, at the time of the purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a disability insurance policy issued in Montana after February 14, 1973, the provision is void and the disability insurance policy will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the disability policy, which would be paid for the services if rendered outside a Montana state institution.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 1, Ch. 169, L. 1979.

Cross-References
State institutions — list, 53-1-202.

33-22-113. Disability insurance coverage of persons eligible for public medical assistance. No disability insurance policy providing hospital, medical, or surgical expense benefits delivered or issued for delivery in this state on or after July 1, 1979, may contain any provision denying or reducing such benefits for the reason that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Sec. 2, Ch. 169, L. 1979.

33-22-114 through 33-22-120 reserved.

33-22-121. Notice required for cancellation. No insurer may cancel a disability insurance policy for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last-known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with any grace period required by 33-22-206.

History: En. Sec. 3, Ch. 723, L. 1985.

33-22-122. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its agent, the policy will lapse or be forfeited.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or agent of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: En. Sec. 4, Ch. 723, L. 1985.

Part 2

Individual Policy Requirements

Part Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

33-22-201. Format and content. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein.

(2) The time when the insurance takes effect and terminates shall be expressed therein.

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be

plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in 33-22-204 through 33-22-231, shall be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof.

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, he is permitted to return the policy within 10 days of its delivery, or such longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; R.C.M. 1947, 40-4002(1) thru (3), (5) thru (8); amd. Sec. 1, Ch. 342, L. 1979.

33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2) below, each such policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the same appear, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision must be preceded individually by the applicable caption shown or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions which are the subject of 33-22-204 through 33-22-232 or any corresponding provisions which are used in lieu thereof in accordance

with such sections shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

History: **En. Secs. 353, 378, Ch. 286, L. 1959; R.C.M. 1947, 40-4003, 40-4028; amd. Sec. 26, Ch. 198, L. 1979.**

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification, 33-15-321 through 33-15-329.

33-22-203. Requirement of other jurisdictions — statutes — violation. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of parts 1 through 4 of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(3) No policy provision which is not subject to parts 1 through 4 of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

(4) A policy delivered or issued for delivery to any person in this state in violation of parts 1 through 4 of this chapter shall be held valid but shall be construed as provided in parts 1 through 4 of this chapter. When any provision in a policy subject to parts 1 through 4 of this chapter is in conflict with any provision of parts 1 through 4 of this chapter, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of parts 1 through 4 of this chapter.

History: **En. Secs. 380, 381, Ch. 286, L. 1959; R.C.M. 1947, 40-4030, 40-4031.**

33-22-204. Entire contract — changes. There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

History: **En. Sec. 354, Ch. 286, L. 1959; R.C.M. 1947, 40-4004.**

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Statute of Frauds — interpretation of written contracts, Title 28, ch. 2, part 9.

33-22-205. Time limit on certain defenses. (1) There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After 2 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 2-year period.

(2) No claim for loss incurred or disability (as defined in the policy) commencing after 2 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(2) Policy provision (1) of subsection (1) shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 2-year period or to limit the application of 33-22-222 through 33-22-226 in the event of misstatement with respect to age or occupation or other insurance.

(3) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of policy provision (1) of subsection (1) the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of 2 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

History: **En. Sec. 355, Ch. 286, L. 1959; R.C.M. 1947, 40-4005; amd. Sec. 21, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Decreased the time limit on defenses from 3 years to 2 years in five places.

33-22-206. Grace period. (1) There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision:

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

History: **En. Sec. 356, Ch. 286, L. 1959; R.C.M. 1947, 40-4006.**

Cross-References

Computation of time — which days counted, 1-1-306.

33-22-207. Reinstatement. (1) There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(2) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(a) until at least age 50; or

(b) in the case of a policy issued after age 44, for at least 5 years from its date of issue.

History: En. Sec. 357, Ch. 286, L. 1959; R.C.M. 1947, 40-4007.

33-22-208. Notice of claim. (1) There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(2) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974; R.C.M. 1947, 40-4008.

33-22-209. Claim forms. There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."

History: En. Sec. 359, Ch. 286, L. 1959; R.C.M. 1947, 40-4009.

33-22-210. Proofs of loss. There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required."

History: En. Sec. 360, Ch. 286, L. 1959; R.C.M. 1947, 40-4010.

Cross-References

Requirement for redundant proofs of loss — unfair trade practice, 33-18-201.

33-22-211. Time of payment of claims. There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

History: En. Sec. 361, Ch. 286, L. 1959; R.C.M. 1947, 40-4011.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231 through 33-18-235.

33-22-212. Payment of claims. (1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $.... (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

History: **En. Sec. 362, Ch. 286, L. 1959; R.C.M. 1947, 40-4012.**

33-22-213. Physical examination and autopsy. There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

History: **En. Sec. 363, Ch. 286, L. 1959; R.C.M. 1947, 40-4013.**

Cross-References

Autopsy — limitations, 50-21-103.

33-22-214. Legal actions. There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the written proof of loss is required to be furnished."

History: **En. Sec. 364, Ch. 286, L. 1959; R.C.M. 1947, 40-4014.**

33-22-215. Change of beneficiary. (1) There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries or to any other changes in this policy."

(2) The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

History: **En. Sec. 365, Ch. 286, L. 1959; R.C.M. 1947, 40-4015.**

33-22-216 through 33-22-220 reserved.

33-22-221. Optional policy provisions — substitutes. Except as provided in 33-22-202(2), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in 33-22-222 through 33-22-231, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

History: En. Sec. 366, Ch. 286, L. 1959; R.C.M. 1947, 40-4016.

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification provisions — exemption for statutory requirements, 33-15-325.

33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

History: En. Sec. 367, Ch. 286, L. 1959; R.C.M. 1947, 40-4017.

33-22-223. Misstatement of age. There may be a provision as follows:

"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

History: En. Sec. 368, Ch. 286, L. 1959; R.C.M. 1947, 40-4018.

33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $.... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

(2) Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary, or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

History: **En. Sec. 369, Ch. 286, L. 1959; R.C.M. 1947, 40-4019.**

33-22-225. Insurance with other insurers — provision of service or expense incurred basis. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-226, there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: **En. Sec. 370, Ch. 286, L. 1959; R.C.M. 1947, 40-4020.**

Cross-References

Public assistance — reduction of benefits disallowed, 33-22-113.

33-22-226. Insurance with other insurers — other benefits. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-225, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 371, Ch. 286, L. 1959; R.C.M. 1947, 40-4021.

33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

History: **En. Sec. 372, Ch. 286, L. 1959; R.C.M. 1947, 40-4022.**

33-22-228. Unpaid premiums. There may be a provision as follows:

"Unpaid Premiums: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

History: **En. Sec. 373; Ch. 286, L. 1959; R.C.M. 1947, 40-4023.**

33-22-229. Conformity with state statutes. There must be a provision as follows:

"Conformity with State Statutes: Any provision of this policy which on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

History: **En. Sec. 374, Ch. 286, L. 1959; R.C.M. 1947, 40-4024; amd. Sec. 10, Ch. 518, L. 1983.**

Compiler's Comments

1983 Amendment: Changed "may" in lead-in to "must".

33-22-230. Illegal occupation. There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

History: **En. Sec. 375, Ch. 286, L. 1959; R.C.M. 1947, 40-4025.**

Cross-References

Felony — definition, 45-2-101.

33-22-231. Intoxicants and narcotics. There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

History: **En. Sec. 376, Ch. 286, L. 1959; R.C.M. 1947, 40-4026.**

Cross-References

Coverage for alcoholism and drug addiction, Title 33, ch. 22, part 7.

33-22-232. Renewal at option of insurer. Disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.

History: **En. Sec. 377, Ch. 286, L. 1959; R.C.M. 1947, 40-4027; amd. Sec. 22, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "on an individual basis" after "right to refuse renewal" near the beginning of the section.

Part 3

Requirements for Certain Individual Coverages

33-22-301. Coverage of newborn under family policy. (1) Each policy of disability insurance or certificate issued thereunder shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) No policy or certificate of insurance may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period.

History: **(1), (2)En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974; Sec. 40-4002.1, R.C.M. 1947; (3)En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; Sec. 40-4002, R.C.M. 1947; R.C.M. 1947, 40-4002.1, 40-4002(4); (4)En. Sec. 23, Ch. 303, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "which in addition to covering the insured also covers members of the insured's family" after "issued thereunder" in (1) and after "certificate of insurance" in (3); added subsection (4).

33-22-302. Age limits — effect on coverage. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

History: En. Sec. 382, Ch. 286, L. 1959; R.C.M. 1947, 40-4032.

33-22-303 reserved.

33-22-304. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738, 40-3740.

33-22-305. Individual family disability insurance continuity of coverage. Sections 33-22-305 through 33-22-311 may be cited as the "Individual Family Disability Insurance Continuity of Coverage Act".

History: En. Sec. 1, Ch. 245, L. 1981.

33-22-306. Purpose. The purpose of 33-22-305 through 33-22-311 is to provide for the right of covered family members under individual family disability insurance policies to continuity of coverage upon the death of the named insured, the divorce, annulment of marriage, or legal separation of the spouse from the named insured, or any other condition specifically stated in such disability insurance policies under which coverage would otherwise terminate as to the covered spouse or covered dependent children of the named insured.

History: En. Sec. 2, Ch. 245, L. 1981.

33-22-307. Continuity of coverage. (1) Subject to the requirements of 33-22-305 through 33-22-311 and on the date specified in the policy under which coverage otherwise terminates as to covered family members, other than for nonpayment of premium, nonrenewal of the policy, or the expiration of the term for which the policy is issued, a covered person (other than one eligible for medicare or any other similar federal or state disability insurance program), including the spouse and any covered dependent child of the last-named insured or the representative of such child, has the right to continuation of coverage under provisions that, at the option of the carrier, are consistent with:

(a) the continuation of the policy with the person exercising the right of continuation designated as the named insured;

(b) the issuance of a converted policy with the person exercising the conversion right designated as the named insured; or

(c) both (a) and (b).

(2) When continuation of coverage or conversion is made in the name of the spouse of the named insured, the coverage may, at the option of the spouse, include covered dependent children for whom the spouse has the responsibility for care and support.

History: **En. Sec. 3, Ch. 245, L. 1981.**

33-22-308. Form of coverage — requirements — evidence of insurability — preexisting conditions. (1) Coverage continued through the issuance of a converted policy shall consist of the form of coverage then being offered by the carrier as a conversion policy in the jurisdiction where the person exercising the conversion right resides that most nearly approximates the coverage of the policy from which conversion is exercised. Continued and converted coverages, other than those provided through the exercise of continuation or conversion rights contained in optionally renewable or limited right of renewal contracts, must contain:

(a) provisions allowing the person exercising the continuation or conversion the right to renew the coverage until the attainment of the age of eligibility for medicare or any other similar federal or state disability insurance program, subject to the right of the carrier to nonrenew all such policies in this state as a class; or

(b) other renewal provisions that are not less favorable to the insured than those contained in the policy from which conversion is exercised.

(2) Coverage provided through continuation or conversion may not require additional evidence of insurability except as to overinsurance and may not impose any preexisting condition limitations or other contractual time limitations other than those remaining unexpired under the policy or contract from which continuation or conversion is exercised.

History: **En. Sec. 4, Ch. 245, L. 1981.**

33-22-309. Notice. The eligible covered family member exercising the continuation or conversion right must notify the carrier and make payment of the applicable premium within 31 days following the date such coverage otherwise terminates as specified in the policy or contract from which continuation or conversion is being exercised.

History: **En. Sec. 5, Ch. 245, L. 1981.**

33-22-310. Nonduplication. Benefits otherwise payable under a converted policy may be reduced:

(1) so they are not, during the first policy year of the converted policy, in excess of those benefits that would have been payable had the coverage under the policy from which conversion is exercised not terminated; and

(2) by the amount of benefits, if any, payable as to the same loss under the policy from which conversion is exercised.

History: En. Sec. 6, Ch. 245, L. 1981.

33-22-311. Overinsurance. The carrier is not required to issue a converted policy if at the time of application the applicant:

(1) (a) has coverage under other disability insurance policies, health service corporation contracts, or self-insured health benefit plans providing similar benefits;

(b) is eligible for coverage under a group policy or contract providing similar benefits;

(c) is provided with similar benefits required by any statute; or

(d) is covered under any national, state, or governmental plan; and

(2) has coverage under subsection (1) that, together with the converted policy, would result in overinsurance according to the carrier's underwriting standards.

History: En. Sec. 7, Ch. 245, L. 1981.

Part 4

Franchise Disability Insurance

33-22-401. Franchise disability insurance. (1) Disability insurance on a franchise plan is hereby declared to be that form of disability insurance:

(a) issued to:

(i) 5 or more employees of any corporation, partnership, or individual employer or any governmental corporation, agency, or department thereof; or

(ii) 10 or more members, employees, or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;

(b) where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members or by some designated person acting on behalf of such employer, association, or union.

(2) The term "employees" as used herein may be deemed to include the officers, managers, and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

History: En. Sec. 383, Ch. 286, L. 1959; R.C.M. 1947, 40-4033.

Part 5

Group Disability Insurance

33-22-501. Group disability insurance defined — eligible groups. Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons and issued upon the following bases:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(intro.), (1) thru (5).

Cross-References

Hearings by Commissioner, 33-1-701.

Groups eligible for group life insurance, Title 33, ch. 20, part 11.

33-22-502. Required provisions of group policies. Each such group disability insurance policy shall contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

History: En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4102(part).

Cross-References

Representations not warranties — standard application construction, 33-15-403.

33-22-503. Continuation of benefits to dependents. Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(6).

33-22-504. Newborn infant coverage. (1) No group disability policy or certificate of insurance which, in addition to covering persons in the insured group, also covers members of such person's family may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

(2) If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it

shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

(3) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. Secs. 385, 386, Ch. 286, L. 1959; amd. Secs. 3, 4, Ch. 74, L. 1973; amd. Secs. 3, 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(7), 40-4102(part).

33-22-505. Direct payment of hospital and medical services. Any group disability policy may on request by the group policyholder provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 387, Ch. 286, L. 1959; R.C.M. 1947, 40-4103.

33-22-506. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739, 40-3740.

33-22-507. Continuing group coverage after reduction of work schedule. A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged other members of the group of the same risk class.

History: En. Sec. 3, Ch. 579, L. 1981.

33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy issued or renewed after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, or as a result of his employer discontinuing his business, such person shall, provided he had been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy, at the option of the insured, shall be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those policies whose eligibility is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy.

History: En. Sec. 4, Ch. 579, L. 1981.

33-22-509. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract.

History: En. Sec. 7, Ch. 579, L. 1981.

33-22-510. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

History: En. Sec. 8, Ch. 579, L. 1981.

33-22-511. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: En. Sec. 9, Ch. 579, L. 1981.

Part 6

Blanket Disability Insurance

33-22-601. Blanket disability insurance defined. Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subsections:

(1) under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on such common carrier or such means of transportation;

(2) under a policy or contract issued to an employer, who shall be deemed the policyholder, covering all employees, dependents, or guests, defined by reference to specified hazards incident to the activities or operations of the employer or any class of employees, dependents, or guests similarly defined;

(3) under a policy or contract issued to a school or other institution of learning, camp or sponsor thereof; or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employees may be included.

(4) under a policy or contract issued in the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization;

(5) under a policy or contract issued to a sports team or sponsors thereof, which shall be deemed the policyholder, covering members, officials, and supervisors;

(6) under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, or agency having jurisdiction thereof, which shall be deemed the policyholder, covering all of the members of such fire department or group;

(7) under a policy or contract issued to cover any other risk or class of risks which in the discretion of the commissioner may be properly eligible for blanket disability insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

History: En. Sec. 388, Ch. 286, L. 1959; R.C.M. 1947, 40-4104.

Cross-References

Volunteer fire departments, Title 7, ch. 33, part 23.

33-22-602. Required provisions of blanket policies. Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with 33-1-501. Every such blanket policy shall contain provisions which in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following, a provision that:

(1) the policy and the application shall constitute the entire contract between the parties and that all statements made by the policyholder shall, in absence of fraud, be deemed representations and not warranties and that no such statements shall be used in defense to a claim under the policy, unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof;

(6) the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(7) no action at law or in equity shall be brought to recover under the policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

History: En. Sec. 389, Ch. 286, L. 1959; R.C.M. 1947, 40-4105.

Cross-References

Standard application provision — warranties not representations, 33-15-403.

Redundant requirements of proof of loss for delay — unfair trade practice, 33-18-201.

Failure to promptly pay — unfair trade practice, 33-18-201.

Limitations on performing autopsies, 50-21-103.

33-22-603. Application and certificates not required. An individual application shall not be required from a person covered under a blanket disability policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

History: En. Sec. 390, Ch. 286, L. 1959; R.C.M. 1947, 40-4106.

33-22-604. Payment of claims — discharge. (1) All benefits under any blanket disability policy shall be payable to the person insured or to his designated beneficiary or beneficiaries or to his estate; except that if the person insured be a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or if the entire cost of the insurance has been borne by the employer such benefits may be made payable to the employer. Provided, however, that the policy may provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person.

(2) Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 391, Ch. 286, L. 1959; R.C.M. 1947, 40-4107.

Part 7

Coverage for Mental Illness, Alcoholism, and Drug Addiction

33-22-701. Scope of part — purpose. The provisions of this part apply to all group policies of accident and health insurance and group subscriber contracts offered in Montana by insurers and health service corporations for the care and treatment of mental illness, alcoholism, and drug addiction. It is the purpose of this part to preserve the rights of the consumer to have such coverage according to his medical and economic needs.

History: En. Sec. 1, Ch. 197, L. 1979; amd. Sec. 1, Ch. 535, L. 1981; amd. Sec. 1, Ch. 593, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing language for former text, which read: "The purpose of this part is to encourage consumers to avail themselves of basic levels of benefits under health insurance policies and contracts for the care and treatment of mental illness, alcoholism, and drug addiction and to preserve the rights of the consumer to select such coverage according to his medical and economic needs."

1981 Amendment: Inserted "mental illness" after "treatment of" in the middle of the section.

Cross-References

Licensing of hospitals and related facilities, Title 50, ch. 5, part 2.

Alcoholism and drug dependence, Title 53, ch. 24.

Facility standards, 53-24-208.

33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital or freestanding inpatient facility, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(c) reasonable charges made by a mental health, alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center; and

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, or social worker.

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed or approved as an alcoholism or drug addiction treatment center by the alcohol authority of the state.

(4) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

History: En. Sec. 2, Ch. 197, L. 1979; amd. Sec. 2, Ch. 535, L. 1981; amd. Sec. 2, Ch. 593, L. 1983; amd. Sec. 2, Ch. 302, L. 1985.

Compiler's Comments

1985 Amendment: At end of (2)(d) added "or social worker".

1983 Amendment: Near beginning of (1), after "hospital" inserted "or freestanding inpatient facility"; near middle of (1), after "confined as" deleted "a hospital" and inserted "an"; inserted (2)(d); in (3) after "physician" inserted "or chemical dependency counselor certified by the state"; in (3)(b) after "licensed" deleted "certified", and before "state" inserted "alcohol authority of the".

1981 Amendment: Inserted "mental illness" after "treatment of" in (1) (two places) and

(2)(a) and after "treatment for" in (2)(b); substituted "a mental health, alcoholism, or drug addiction treatment center" for "an alcoholism or drug addiction treatment center" in (2)(c); and added definitions of "mental health treatment center" and "mental illness".

Cross-References

Disclaimer provision allowable — disability insurance, 33-22-231.

Medicine — licensure, Title 37, ch. 3.

Licensure of psychologists, Title 37, ch. 17.

Licensure of social workers, Title 37, ch. 22.

33-22-703. Coverage for mental illness, alcoholism, and drug addiction. Insurers and health service corporations transacting group health insurance or group health plans in this state shall provide, under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d) as may be offered by the insurer or service plan corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000;

(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits.

History: En. Sec. 3, Ch. 197, L. 1979; amd. Sec. 3, Ch. 535, L. 1981; amd. Sec. 3, Ch. 593, L. 1983.

Compiler's Comments

1983 Amendment: In introductory clause after "transacting" inserted "group"; after "health insurance" inserted "or group health plans"; after "state" substituted "shall provide" for "must make available"; inserted "group" before "policies" and "contracts"; after "applicant" deleted "for a group or individual policy or contract to reject the coverage or"; after "benefits" inserted "above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d)"; in (1) after "basic" substituted "inpatient" for "hospital"; inserted (1)(b); once in (2) and twice in (2)(a) deleted "hospital" before "benefits"; in (2)(a) after "limited to" inserted "no less than"; in (2)(c) substituted existing language for "maximum lifetime benefits may, for mental illness, alcoholism, and drug addiction in the aggregate, be no less than an amount equal to the lesser of $10,000 or 25% of the lifetime policy limit."; and inserted (2)(d).

1981 Amendment: Added treatment and care of mental illness to available coverages by inserting "mental illness," before "alcoholism, and drug addiction" in three places.

33-22-704. Applicability. (1) Except as provided in subsections (2) and (3), this part applies to policies or contracts delivered or issued for delivery in this state more than 120 days after July 1, 1979, but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

(2) With respect to mental illness, this part applies to policies or contracts delivered or issued for delivery in this state after January 29, 1982.

(3) This part applies to policies or contracts delivered or issued for delivery in this state after December 31, 1983, but does not apply to blanket, short-term travel, accident only, limited or specified disease, or policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

History: En. Sec. 4, Ch. 197, L. 1979; amd. Sec. 4, Ch. 535, L. 1981; amd. Sec. 4, Ch. 593, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), inserted reference to (3); inserted (3); and made a minor change in phraseology.

1981 Amendment: Added "Except as provided in subsection (2)" at the beginning of (1); and added subsection (2).

Part 8

Extended Health Insurance

33-22-801. Purpose. It is the purpose of this part to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965; R.C.M. 1947, 40-5401.

33-22-802. Definitions. Wherever used in this part, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(1) "Association" means a voluntary unincorporated association formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this part in this or any other state having legislation enabling the issuance of insurance of the type provided in this part.

(2) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(3) "Extended health insurance" means hospital, surgical, and medical expense insurance provided by a policy issued as provided by this part.

History: En. Sec. 2, Ch. 61, L. 1965; R.C.M. 1947, 40-5402.

33-22-803. Joint underwriting association for group disability insurance authorized. (1) Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued, and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing, and administering such insurance. The policyholder may be an association, a trustee, or any other person.

(2) A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this part shall be another form of group disability insurance.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-804. Corporate powers of association — examination of books. (1) Any association formed for the purposes of this part may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association made upon a managing agent, any member thereof, or any agent authorized by appointment to receive service of process shall have the same force and effect as if such service had been made upon all members of the association.

(2) Such association's books and records shall also be subject to examination under the provisions of 33-1-315, 33-1-316, and 33-1-401 through 33-1-413, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965; R.C.M. 1947, 40-5405.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service on insurance companies — Commissioner as attorney, 33-1-601.

Powers of domestic business corporation, 35-1-108.

33-22-805. Documents to be filed with commissioner by association. The articles of association of any association formed in accordance with this part, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

History: **En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).**

Cross-References

Agent for service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-22-806. Limited exemption from prosecution. No act done, action taken, or agreement made pursuant to the authority conferred by this part shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: **En. Sec. 8, Ch. 61, L. 1965; R.C.M. 1947, 40-5408.**

Cross-References

Unlawful restraint of trade — no mention of insurance, 30-14-205.

33-22-807 through 33-22-810 reserved.

33-22-811. Policy provisions concerning additional coverage. Any policy developed pursuant to 33-22-803 may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical, or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100% of covered expenses which he is required to pay. Any insurer issuing individual policies providing extended hospital, surgical, or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision.

History: **En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).**

33-22-812. Policy forms to be approved — procedure — disapproval. (1) The forms of the policies, applications, certificates or other evidence of insurance coverage, and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner.

(2) The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading, or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided.

(3) In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk

charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state, including any differing operating methods of the insurers joining in the issue of the policy.

(4) In exercising the powers conferred upon him by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

(5) The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part); amd. Sec. 24, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof" from the end of (1).

Cross-References

Approval of policy forms by Commissioner, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

33-22-813. Sale area — agents. (1) Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancelable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

(2) A person licensed to transact disability insurance as an insurance agent may transact extended health insurance and may be paid a commission thereon.

History: En. Secs. 3, 4, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part), 40-5404; amd. Sec. 13, Ch. 345, L. 1979.

Cross-References

Licensing agents, Title 33, ch. 17.

33-22-814. Deceptive practices prohibited. The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued pursuant to this part shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).

Cross-References

False or deceptive advertising — unfair trade practice, 33-18-203.

33-22-815. Report. The association shall submit an annual report to the commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this part, and the calendar year experience applicable to such insurance offered under this part, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: **En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).**

Cross-References

Annual report of insurers, 33-2-701.

33-22-816. Adjustments for federal benefits. If and when a program of hospital, surgical, and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this part shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

History: **En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).**

Part 9

Medicare Supplement Insurance Minimum Standards

33-22-901. Short title. This part may be cited as the "Medicare Supplement Insurance Minimum Standards Act".

History: **En. Sec. 1, Ch. 298, L. 1981.**

33-22-902. Purpose. The purpose of this part is to establish minimum standards for medicare supplement insurance policies and to establish a regulatory program that meets the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980, approved June 9, 1980.

History: **En. Sec. 2, Ch. 298, L. 1981.**

33-22-903. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means a certificate issued under a group medicare supplement policy that has been delivered or issued for delivery in this state.

(3) "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(4) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members;

(c) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981.

History: En. Sec. 3, Ch. 298, L. 1981.

33-22-904. Standards for policy provisions — rules. (1) The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies. The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;
(b) initial and subsequent conditions of eligibility;
(c) nonduplication of coverage;
(d) probationary periods;
(e) benefit limitations, exceptions, and reductions;
(f) elimination periods;
(g) requirements for replacement;
(h) recurrent conditions; and
(i) definitions of terms.

(2) The commissioner may adopt reasonable rules that prohibit policy provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than 6 months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

History: En. Sec. 4, Ch. 298, L. 1981.

33-22-905. Minimum standards for benefits — rules. The commissioner shall issue reasonable rules to establish minimum standards for benefits for medicare supplement policies.

History: En. Sec. 5, Ch. 298, L. 1981.

33-22-906. Loss ratio standards. Medicare supplement policies are expected to return to policyholders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

History: En. Sec. 6, Ch. 298, L. 1981.

33-22-907. Disclosure standards — informational brochure — rules. (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy;

(iii) a statement of the renewal provisions including any reservation by the insurer of a right to change premiums;

(iv) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare by reason of age.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare

supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare by reason of age, other than:

(a) medicare supplement policies;
(b) disability income policies;
(c) basic, catastrophic, or major medical expense policies;
(d) single premium, nonrenewable policies; or
(e) other policies defined in 33-22-903(4).

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare by reason of age.

History: En. Sec. 7, Ch. 298, L. 1981.

33-22-908. Notice of free examination. (1) Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, must have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant has the right to return the policy or certificate within 10 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

(2) Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

History: En. Sec. 8, Ch. 298, L. 1981.

33-22-909. Administrative procedures. Rules adopted pursuant to this part are subject to the provisions of 33-1-313 and Title 2, chapter 4.

History: En. Sec. 9, Ch. 298, L. 1981.

Part 10

Home Health Care Coverage

33-22-1001. Definition of home health care. "Home health care" means services provided by a licensed home health agency to an insured in his place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

(1) nursing;
(2) home health aide services;
(3) physical therapy;
(4) occupational therapy;
(5) speech therapy;
(6) hospice service;
(7) medical supplies and equipment suitable for use in the home; and
(8) medically necessary personal hygiene, grooming, and dietary assistance.

History: En. Sec. 1, Ch. 508, L. 1981.

33-22-1002. Availability of coverage for home health care. Insurers and health services corporations transacting health insurance business in this state must make available, under group insurance policies and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy or contract may select any level of benefits as may be offered by the insurer or service plan corporation.

History: **En. Sec. 2, Ch. 508, L. 1981.**

33-22-1003. Applicability. This part applies to policies or contracts delivered or issued for delivery in this state after January 29, 1981, but does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, or to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under federal governmental plans.

History: **En. Sec. 3, Ch. 508, L. 1981.**

Parts 11 through 14 reserved

Part 15

Comprehensive Health Association and Plan

33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage offered by the association through the lead carrier.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan; and

(b) within 6 months prior to the date of application, has been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(5) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(6) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(7) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(8) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(9) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

(10) "Qualified plan" means those health benefit plans certified by the commissioner as providing the minimum benefits required by 33-22-1521 or the actuarial equivalent of those benefits.

(11) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

History: **En. Sec. 1, Ch. 595, L. 1985.**

33-22-1502. Duties of the commissioner — rules. The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to assure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part.

History: **En. Sec. 2, Ch. 595, L. 1985.**

33-22-1503. Comprehensive health association — mandatory membership. (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

(d) establish administrative and accounting procedures for the operation of the association;

(e) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association; and

(f) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(e).

History: **En. Sec. 3, Ch. 595, L. 1985.**

33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the seven participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner; and

(b) a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them due to their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

History: **En. Sec. 4, Ch. 595, L. 1985.**

33-22-1505. Liability of association membership. No member of the association is liable for the actions of the association or its lead carrier.

History: **En. Sec. 13, Ch. 595, L. 1985.**

33-22-1506 through 33-22-1510 reserved.

33-22-1511. Minimum benefits of association plan. The association through the association plan shall offer a policy that provides at least the benefits of a qualified plan as required by 33-22-1521.

History: **En. Sec. 5, Ch. 595, L. 1985.**

33-22-1512. Association plan premium. The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of premiums may not be less than 150% or more than 400% of the average premium rates charged by the five largest insurers with the largest individual qualified plan of insurance in force in this state. The premium rates of the five insurers used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually by all insurers at the request of the commissioner. The information requested must include the number of qualified plans or actuarial equivalent plans offered by each insurer, the rates charged by the insurer for each type of plan offered by the insurer, and any other information the commissioner considers necessary. The association shall utilize generally acceptable actuarial principles and structurally compatible rates.

History: **En. Sec. 8, Ch. 595, L. 1985.**

33-22-1513. Operation of association plan. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of:

(a) the association member's total disability insurance premium received from or on behalf of Montana residents divided by;

(b) the total disability premium received by all association members from or on behalf of Montana residents, as determined by the commissioner.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall, each year the legislature meets in regular session, on or before January 15, report to the legislature the total amount of premium tax offset claimed by association members during the preceding biennium.

History: En. Sec. 9, Ch. 595, L. 1985.

33-22-1514. Administration of association plan — rules. (1) Any member of the association may submit to the commissioner policies to be proposed to serve as the association plan. The commissioner shall prescribe by rule the time and manner of the submission.

(2) Upon the commissioner's approval of the policy forms and contracts submitted, the association shall select policies and contracts by a member or members of the association to be the association plan. The association shall select one lead carrier to issue the qualified plans. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(3) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (2) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(4) The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(5) The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

(6) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

(7) The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(8) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for its actions, subject to the laws of this state.

History: **En. Sec. 10, Ch. 595, L. 1985.**

33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner which facilitates public participation in the association plan.

(3) All licensed disability insurance agents may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an agent's referral fee of $25 to each licensed disability insurance agent who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid to the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance must notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it.

History: **En. Sec. 11, Ch. 595, L. 1985.**

33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that he fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. This subsection does not apply to a person who has had continuous coverage under an individual, family, or group policy during the year immediately preceding the filing of an application for nonelective procedures.

(5) A change of residence from Montana to another state immediately terminates eligibility for renewal of coverage under the association plan.

History: En. Sec. 12, Ch. 595, L. 1985.

33-22-1517 through 33-22-1520 reserved.

33-22-1521. Qualified plan — minimum benefits. A plan of health coverage must be certified as a qualified plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 80% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but such maximums may not be less than $100,000.

(2) Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician or other licensed health care professional provided for in 33-22-111:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of medical equipment, which shall be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental; and

(l) services of a licensed home health agency, up to a maximum of 180 visits per year.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) drugs requiring a physician's prescription;

(ii) services of a nursing home;

(iii) home and office calls, except as specifically provided in subsection (2);

(iv) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(v) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(vi) oral surgery, except as specifically provided in subsection (2);

(vii) that part of a charge for services or articles which exceeds the prevailing charge in the locality where the service is provided; or

(viii) care that is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition;

(iv) confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) organ transplants;

(vii) room and board for a nonemergency admission on Friday or Saturday;

(viii) pregnancy, except complications of pregnancy;

(ix) routine well baby care;

(x) complications to a newborn, unless no other source of coverage is available;

(xi) sterilization or reversal of sterilization;

(xii) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xiii) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xiv) artificial insemination or treatment for infertility; or

(xv) breast augmentation or reduction.

History: En. Sec. 6, Ch. 595, L. 1985.

33-22-1522. Certification of qualified plan. Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of this part, the commissioner shall make a determination within 90 days as to whether the plan is qualified. If determined to be qualified, the plan of health coverage must be labeled as a "qualified plan" on the front of the policy.

History: En. Sec. 7, Ch. 595, L. 1985.

CHAPTER 23

CASUALTY INSURANCE

Part 1 — General Provisions

Section

33-23-101. Repealed.
33-23-102. Existence of insurance not to be made evident.

Part 2 — Motor Vehicle Liability

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.
33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.
33-23-203. Limitation of liability under motor vehicle liability policy.
33-23-204 through 33-23-210 reserved.
33-23-211. Limitations on basis for cancellation.
33-23-212. Notice required for cancellation — exception — statement that insurer will specify reason upon request — penalty.
33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.
33-23-214. Advance notice required for nonrenewal — exceptions — exemptions.
33-23-215. No liability for statements in connection with cancellation or nonrenewal.
33-23-216. Retention and proof of notice.

Part 3 — Professional Liability

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited.
33-23-302. Cancellation or increase of premium rates — sixty days' written notice required.
33-23-303 through 33-23-310 reserved.
33-23-311. Information required of professional liability insurers — submission.

Part 4 — Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty.

Chapter Cross-References

Apportionment of casualty insurance — rating groups — pooling, 33-16-305.

Destruction of property to defraud insurer — crime, 45-6-101.

Fire losses — information available to state agencies, 50-63-401.

Suspicious fires — report, 50-63-402.

Transfer of ownership of vehicles by insurance company, 61-3-205.

Physicians, nurses, and hospitals — liens on personal injury claims, Title 71, ch. 3, part 11.

Part 1

General Provisions

33-23-101. Repealed. Sec. 4, Ch. 425, L. 1979.

History: En. Sec. 411, Ch. 286, L. 1959; amd. Sec. 5, Ch. 234, L. 1977; R.C.M. 1947, 40-4401.

33-23-102. Existence of insurance not to be made evident. No attempt may be made in the trial of an action brought against a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff.

History: En. Sec. 1, Ch. 240, L. 1963; amd. Sec. 6, Ch. 234, L. 1977; R.C.M. 1947, 40-4402; amd. Sec. 1, Ch. 425, L. 1979.

Cross-References

Nonadmissibility of liability insurance, Rule 411, Montana Rules of Evidence (see Title 26, ch. 10).

Part 2

Motor Vehicle Liability

Part Cross-References

Attorney's fees — motor vehicle claim, 25-10-303.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Motor vehicle liability policy defined — minimum limits, 61-6-103.

Motor vehicle registration — liability insurance required, Title 61, ch. 6, part 3.

Motor club service companies — insurance and services, Title 61, ch. 12, part 3.

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975; R.C.M. 1947, 40-4403.

Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

Claims by insureds or third parties against insolvent insurers, 33-2-1367.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision, and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969; R.C.M. 1947, 40-4404.

33-23-203. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, shall be determined as follows, regardless of the number of vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident shall be the limit specified for the vehicle involved in the accident;

(b) if no vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident shall be the highest limit of coverage specified for any one vehicle insured under the policy; and

(c) the limits of coverage specified for each vehicle insured under the policy shall not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent duplicate payments for the same element of loss.

History: En. Sec. 1, Ch. 212, L. 1981.

33-23-204 through 33-23-210 reserved.

33-23-211. Limitations on basis for cancellation. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium; or

(b) the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding $100 shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971; R.C.M. 1947, 40-4407.

Cross-References

Revocation or suspension of driver's license, Title 61, ch. 5, part 2.

33-23-212. Notice required for cancellation — exception — statement that insurer will specify reason upon request — penalty. (1) Notwithstanding any other provision of this code, no cancellation by an insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy of a written notice of the cancellation stating when, not less than 30 days after the date of such mailing or delivery, the date the cancellation shall become effective.

(2) No notice of cancellation of a policy to which 33-23-211 applies shall be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(3) Subsection (2) shall not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine of not exceeding $500 for each violation thereof.

History: **En. Secs. 1, 4, 7, Ch. 262, L. 1971; R.C.M. 1947, 40-4405, 40-4408, 40-4411.**

33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: **En. Sec. 2, Ch. 262, L. 1971; R.C.M. 1947, 40-4406.**

Cross-References

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

33-23-214. Advance notice required for nonrenewal — exceptions — exemptions. (1) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least 30 days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of his request, the reason or reasons for such nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies.

(3) This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy or the renewal thereof or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(4) This section shall not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies;

(c) if the insured's agent or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) A notice of nonrenewal of a policy under this section, which policy has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211.

History: En. Sec. 5, Ch. 262, L. 1971; amd. Sec. 1, Ch. 249, L. 1975; R.C.M. 1947, 40-4409.

33-23-215. No liability for statements in connection with cancellation or nonrenewal. There shall be no liability on the part of and no cause of action of any nature shall arise against the insurance commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal for any statement made by any of them in any written notice of cancellation or nonrenewal or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971; R.C.M. 1947, 40-4412.

Cross-References

State subject to suit unless exempted by two-thirds vote of each house of Legislature, Art. II, sec. 18, Mont. Const.

Hearings by Commissioner, 33-1-701.

Insurance information and privacy protection, Title 33, ch. 19.

33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter shall be retained for a period of 3 years by the insurer or his agent within this state and shall be made available within this state for examination or inspection by the commissioner or his agents at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's latest known address shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971; amd. Sec. 2, Ch. 469, L. 1977; R.C.M. 1947, 40-4410.

Part 3

Professional Liability

Part Cross-References

Professional licensing — medical practitioners, Title 37, chapters 3 through 12, 17, and 18.

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited. Whenever an action for damages is filed against or a claim or demand for damages is made to an insurer of a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim, or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim, or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim, or demand shall not be a ground for cancellation or for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: **En. Sec. 1, Ch. 210, L. 1971; amd. Sec. 1, Ch. 303, L. 1973; R.C.M. 1947, 40-4413.**

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

33-23-302. Cancellation or increase of premium rates — sixty days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the insured 60 days' written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: **En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973; R.C.M. 1947, 40-4414.**

33-23-303 through 33-23-310 reserved.

33-23-311. Information required of professional liability insurers — submission. (1) For purposes of this section, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

(2) Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession, from its experience in the state of Montana, in its annual statement to the commissioner:

(a) the number of insureds as of December 31 of the calendar year next preceding;

(b) the amount of earned premiums paid by the insureds during the calendar year next preceding;

(c) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;

(d) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;

(e) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;

(f) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;

(g) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;

(h) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:

(i) judgment or verdict for the plaintiff;

(ii) judgment or verdict for the defendant;

(iii) other;

(i) the total monetary amount paid out, in those lawsuits specified in subsection (h);

(j) the total number of the insurer's insureds included in those lawsuits specified in subsection (h);

(k) the number of new trials granted during the calendar year next preceding;

(l) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and

(m) such other information and statistics as the commissioner considers necessary.

(3) The commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to this section relevant to the particular profession or facility.

History: (1)En. 40-2827 by Sec. 1, Ch. 212, L. 1977; Sec. 40-2827, R.C.M. 1947; (2)En. 40-2828 by Sec 2, Ch. 212, L. 1977; Sec. 40-2828, R.C.M. 1947; (3)En. 40-2829 by Sec. 3, Ch. 212, L. 1977; Sec. 40-2829, R.C.M. 1947; R.C.M. 1947, 40-2827, 40-2828, 40-2829.

Cross-References

Statistical records of court actions — Supreme Court administrator, 3-1-702.

Part 4

Homes

Part Cross-References

Credit insurance on real property — borrower allowed choice of insurers, 33-18-501.

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) No insurer shall cancel or refuse to renew any policy insuring private residences including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile without first giving to the insured 30 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104.

History: En. Secs. 1, 2, Ch. 374, L. 1971; amd. Secs. 1, 2, Ch. 82, L. 1975; R.C.M. 1947, 40-4415, 40-4416.

CHAPTER 24

PROPERTY INSURANCE

Part 1 — General Provisions

Section
33-24-101. Measure of the indemnity — rescission for fraud.
33-24-102. Insuring improvements — insurance equal to true value.

33-24-103. Specific valuation — loss equal to insured value.

Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Consumer loans — insurance as security, 32-5-306.

Property insurance — definition, 33-1-210.

Credit insurance on real or personal property — borrower gets choice of insurers, 33-18-501.

Destruction of property to defraud insurer — crime, 45-6-101.

Fire losses — information available to state agencies, 50-63-401.

Report of suspicious fires, 50-63-402.

Part 1

General Provisions

33-24-101. Measure of the indemnity — rescission for fraud. If there is no valuation in the policy and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

History: En. Sec. 409, Ch. 286, L. 1959; R.C.M. 1947, 40-4301.

Cross-References

"Valued" and "open" policies — construction, 33-15-316.

33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

History: En. Sec. 410, Ch. 286, L. 1959; R.C.M. 1947, 40-4302; amd. Sec. 25, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "against loss or damage and the property insured is considered to be a total loss" for "against loss by fire, tornado, or lightning and the property insured shall be wholly destroyed" in the first sentence.

Cross-References

"Valued" and "open" policies — construction, 33-15-316.

33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he

shall compute any total loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974; R.C.M. 1947, 40-4303; amd. Sec. 26, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "total" before "loss" in (2); deleted subsection (3) relating to the procedure for varying computations of loss.

CHAPTER 25

MONTANA TITLE INSURANCE ACT

Part 1 — General Provisions

Section

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.
33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.
33-25-103. Repealed.
33-25-104. Short title.
33-25-105. Definitions.
33-25-106. Application.
33-25-107 through 33-25-110 reserved.
33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report.

Part 2 — Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — rules.
33-25-202. Sharing of rate proceeds.
33-25-203 through 33-25-210 reserved.
33-25-211. Guaranty fund — investments.
33-25-212. Rates filed with commissioner.
33-25-213. Limitations on authority.
33-25-214. Underwriting standards — record retention.
33-25-215. Report of claims.
33-25-216. Notice of issuance of mortgagee policy.

Part 3 — Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title agent's license.
33-25-302. Disapproval of agency contracts.

Part 4 — Prohibited Practices—Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions.
33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction.
33-25-403. Prohibited practices — producer and associates — prohibition of favored agent or insurer.

Chapter Cross-References

Title insurance — definition, 33-1-212.

Policy forms to be approved by Commissioner, Title 33, ch. 1, part 5.

Combinations of insuring powers, 33-2-108.

Special investments by title insurer, 33-2-851.

Examination of applicant for title agent's license, 33-17-212.

Authority to be trustee — trust indentures, 71-1-306.

Part 1

General Provisions

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.

33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.

33-25-103. Repealed. Sec. 22, Ch. 519, L. 1985.
History: En. Sec. 415, Ch. 286, L. 1959; R.C.M. 1947, 40-4601; amd. Sec. 2, Ch. 84, L. 1983.

33-25-104. Short title. This chapter may be cited as the "Montana Title Insurance Act".
History: En. Sec. 1, Ch. 519, L. 1985.

33-25-105. Definitions. As used in this chapter, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title agent that is referred to it by a producer or associate having a financial interest in the title insurer or title agent.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be

incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property; or

(c) acting as broker, agent, or representative of a person described in subsection (8)(a) or (8)(b).

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) (a) "Title agent" means a person who holds a valid title agent's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) "Title agent" does not include an approved attorney.

(12) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title agent, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or agent, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (12)(a) through (12)(c) in a manner designed to evade the provisions of this title.

(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

History: En. Sec. 2, Ch. 519, L. 1985.

Cross-References

Title insurance — definition, 33-1-212.

33-25-106. Application. (1) This chapter applies to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) This chapter does not authorize the practice of law by a person who is not licensed to practice law in this state, and this chapter does not authorize the commissioner to regulate the practice of law.

History: En. Sec. 3, Ch. 519, L. 1985.

33-25-107 through 33-25-110 reserved.

33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

History: En. Sec. 4, Ch. 519, L. 1985.

Part 2

Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

History: En. Sec. 7, Ch. 519, L. 1985.

33-25-202. Sharing of rate proceeds. Title insurers and agents may share rate proceeds between or among themselves in any combination and may exchange business and share commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

History: En. Sec. 11, Ch. 519, L. 1985.

33-25-203 through 33-25-210 reserved.

33-25-211. Guaranty fund — investments. A title insurer shall establish and maintain the guaranty fund required under 33-2-517 and may invest in necessary plant and equipment and in other investments as authorized under 33-2-851.

History: En. Sec. 417, Ch. 286, L. 1959; R.C.M. 1947, 40-4603; Sec. 33-25-101, MCA 1983; redes. 33-25-211 by Code Commissioner, 1985.

33-25-212. Rates filed with commissioner. (1) Every title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. The rates shall be all-inclusive of the total charge for such insurance as specified in the policy and shall be accompanied by supporting data.

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner.

History: En. Sec. 416, Ch. 286, L. 1959; R.C.M. 1947, 40-4602; amd. Sec. 27, Ch. 303, L. 1981; Sec. 33-25-102, MCA 1983; redes. 33-25-212 by Code Commissioner, 1985.

Compiler's Comments

1981 Amendment: Deleted "risk" before "rates" in the first sentence of (1); added the last sentence in (1); deleted former subsection (4) which was a transition of compliance in 1961.

Cross-References

Hearings by Commissioner, 33-1-701.

33-25-213. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title agents or approved attorneys in the normal course of its business.

History: En. Sec. 5, Ch. 519, L. 1985.

Cross-References

Combinations of insuring powers, 33-2-108.

33-25-214. Underwriting standards — record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising thereunder.

History: En. Sec. 6, Ch. 519, L. 1985.

33-25-215. Report of claims. A title agent must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

History: En. Sec. 9, Ch. 519, L. 1985.

33-25-216. Notice of issuance of mortgagee policy. (1) A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title agent for at least 5 years after receipt.

History: En. Sec. 15, Ch. 519, L. 1985.

Part 3

Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title agent's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent or may suspend or revoke a title agent's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a firm, corporation, or other business entity licensed as a title agent for the actions

described in subsection (1) of any individual designated in the license to exercise its powers.

History: **En. Sec. 10, Ch. 519, L. 1985.**

33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title agent and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent. Factors the commissioner may consider in this determination include but are not limited to the agent's duties under the contract and the general level of amounts paid to or retained by other title agents in the state performing or assuming comparable duties.

(2) No person may act as a title agent under an agency contract that has been disapproved by the commissioner.

History: **En. Sec. 8, Ch. 519, L. 1985.**

Part 4

Prohibited Practices — Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

History: **En. Sec. 12, Ch. 519, L. 1985.**

33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction. (1) A person found to have violated the provisions of 33-25-401 is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on 33-25-401 and this section, the court may award to the prevailing party court costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of 33-25-401.

History: **En. Sec. 13, Ch. 519, L. 1985.**

33-25-403. Prohibited practices — producer and associates — prohibition of favored agent or insurer. No producer or associate may, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent. No title insurer or title agent may knowingly participate in a plan or transaction prohibited by this section.

History: **En. Sec. 14, Ch. 519, L. 1985.**

CHAPTER 26

SURETYSHIP

Part 1 — Surety Insurance

Section

33-26-101. Corporations as sureties.
33-26-102. Requisites of undertakings or bonds of individuals.
33-26-103. Rights of surety insurer to give bond.
33-26-104. Surety insurers as sole surety on official bonds — release.
33-26-105. Surety companies not permitted to furnish bonds where indemnity required.
33-26-106. Cost of surety bond to be allowed in account of officer.
33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety.

Chapter Cross-References

Suretyship, Title 28, ch. 11, part 4.

Surety insurance — definition, 33-1-211.

Part 1

Surety Insurance

33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and shall be accepted as security or as a sole and sufficient security upon such undertaking or bond, and such corporate surety shall be subject to all liabilities and entitled to all the rights of natural persons as such sureties.

(2) Whenever the liabilities of any such corporation shall exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not so paid up, then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for 3 weeks in a daily paper published in the town or city wherein the principal office of such corporation is, and until such deficiency is paid up such company shall not be accepted as a surety on any undertaking or bond. In estimating the condition of any such company, the state auditor shall allow as assets only such as are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by said company on all risks then in force.

History: Ap. p. Sec. 1, p. 70, L. 1893; re-en. Sec. 1900, C. Civ. Proc. 1895; re-en. Sec. 7193, Rev. C. 1907; re-en. Sec. 9826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1056; re-en. Sec. 9826, R.C.M. 1935; Sec. 93-8711, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8711, 93-8712(part).

Cross-References

Appeals to Supreme Court — applicability, Rule 8, M.R.App.Civ.P. (see Title 25, ch. 21).

33-26-102. Requisites of undertakings or bonds of individuals. In all cases where an undertaking or bond or undertaking with sureties is authorized or required by any law of this state, the officer taking the same must, except in the case of corporations as mentioned in 33-26-101, require the sureties to accompany it with an affidavit that they are each responsible and are residents and householders or freeholders within the state and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution. When the amount specified in the undertaking or bond exceeds $3,000 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond if the whole amount be equivalent to that of two sufficient sureties.

History: Ap. p. Sec. 433, p. 131, Bannack Stat.; re-en. Sec. 593, p. 157, Cod. Stat. 1871; re-en. Sec. 523, p. 177, L. 1877; re-en. Sec. 523, 1st Div. Rev. Stat. 1879; re-en. Sec. 540, 1st Div. Comp. Stat. 1887; en. Sec. 1899, C. Civ. Proc. 1895; re-en. Sec. 7192, Rev. C. 1907; re-en. Sec. 9825, R.C.M. 1921; re-en. Sec. 9825, R.C.M. 1935; Sec. 93-8710, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8710, 93-8712(part).

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Appeals to Supreme Court — applicability, Rule 8, M.R.App.Civ.P. (see Title 25, ch. 21).

Appeals from Justice's Court — applicability, 25-33-203.

Affidavit — definition, 26-1-1001.

33-26-103. Rights of surety insurer to give bond. A surety insurer authorized as such under this code shall have the power to become the surety on bonds and undertakings required by law, subject to all the rights and liabilities of private persons. This section shall not be deemed to limit in any way the powers, obligations, and liabilities of such insurers as provided for in other provisions of this code.

History: En. Sec. 412, Ch. 286, L. 1959; R.C.M. 1947, 40-4501.

Cross-References

Suretyship — general provisions, Title 28, ch. 11, part 4.

Certificate of authority required, 33-2-101.

33-26-104. Surety insurers as sole surety on official bonds — release. (1) Whenever any bond, undertaking, recognizance, or other obligation is by law or the charter, ordinance, or rules of any municipality, board, body, organization or public officer required or permitted to be made, given, tendered, or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation or the refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guaranty may be executed by a surety insurer qualified to act as surety or guarantor as in this code provided. Such execution by such insurer of such bond, undertaking, obligation, recognizance, or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, or rule that such bond, undertaking, obligation, recognizance, or guaranty shall be executed by one surety or by one or more sureties or that such surety shall be a resident or householder or freeholder, or either or both, or possessed of any other qualifications. All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance, or guaranty when so executed by such insurer, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, or rule.

(2) A surety insurer may be released from its liability on a bond referred to in this section upon the same terms and conditions as are by law prescribed for the release of individual sureties.

History: En. Secs. 413, 414, Ch. 286, L. 1959; R.C.M. 1947, 40-4502, 40-4503.

Cross-References

Official bonds — general provisions, Title 2, ch. 9, parts 5 through 8.

33-26-105. Surety companies not permitted to furnish bonds where indemnity required. No foreign or other surety company shall be permitted to furnish the bond for any state, county, or city official, where such company requires in addition to the payment of reasonable premiums any indemnity or other security.

History: En. Sec. 1, Ch. 6, L. 1911; re-en. Sec. 6234, R.C.M. 1921; re-en. Sec. 6234, R.C.M. 1935; R.C.M. 1947, 40-1725.

Cross-References

Indemnity defined, 28-11-301.

33-26-106. Cost of surety bond to be allowed in account of officer. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety.

History: En. Sec. 23, Ch. 139, L. 1909; re-en. Sec. 6228, R.C.M. 1921; re-en. Sec. 6228, R.C.M. 1935; R.C.M. 1947, 40-1724.

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It shall be lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof without the written consent of such surety or sureties or an order of court or a judge thereof made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

History: En. Sec. 1, Ch. 146, L. 1943; R.C.M. 1947, 40-1703.

CHAPTERS 27 THROUGH 29

RESERVED

CHAPTER 30

HEALTH SERVICE CORPORATIONS

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33-30-1008. Preexisting conditions.
33-30-1009. Insured's family — conversion entitlement.
33-30-1010. Renumbered 33-30-1021 by Code Commissioner, 1983.
33-30-1011. Dentists performing services common to both medicine and dentistry.
33-30-1012. Coverage for services provided by professional counselors.
33-30-1013 through 33-30-1020 reserved.
33-30-1021. Applicability.

Chapter Cross-References

Jurisdiction of providers of health care benefits, Title 33, ch. 1, part 11.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Part 1

General Provisions

33-30-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; licensed social worker or psychologist; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries.

History: En. 40-5901 by Sec. 1, Ch. 319, L. 1975; R.C.M. 1947, 40-5901(1) thru (3); amd. Sec. 14, Ch. 544, L. 1983.

Compiler's Comments

1983 Amendment: In (2), after "nursing services" inserted "licensed social worker or psychologist".

Cross-References

Board of social work examiners, 2-15-1854.

Nonprofit corporations, Title 35, ch. 2.

Licensing — medical professions, Title 37.

Qualifications and licensing of social workers, Title 37, ch. 22.

33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this chapter.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this chapter, the latter shall prevail.

History: En. 40-5902 by Sec. 2, Ch. 319, L. 1975; R.C.M. 1947, 40-5902.

Cross-References

Insurance Code — exception for health service corporations, 33-1-102.

Administrator — definition and applicability, 33-17-601.

Applicable provisions of Insurance Code:

Administrative penalty for failure to pay promptly, 33-18-233.

Insurance information and privacy protection, 33-19-104.

Medicare Supplement Insurance Minimum Standards, 33-22-903.

33-30-103. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) (a) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(b) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships, or individuals in the field of health care and services; and

(2) research, education, or related activity to further objects within the purview of this chapter.

History: En. 40-5903 by Sec. 3, Ch. 319, L. 1975; R.C.M. 1947, 40-5903.

33-30-104. No profit organization may be a health service corporation. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this chapter.

History: En. 40-5904 by Sec. 4, Ch. 319, L. 1975; R.C.M. 1947, 40-5904.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined, its officers, employees, and agents, shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or his examiner shall make a verified report of the examination.

(5) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

History: En. 40-5912 by Sec. 12, Ch. 319, L. 1975; R.C.M. 1947, 40-5912; amd. Sec. 3, Ch. 452, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2).

Cross-References

Contested cases — administrative hearings, 2-4-102; Title 2, ch. 4, part 6.

33-30-106. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this chapter are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

History: En. 40-5916 by Sec. 16, Ch. 319, L. 1975; R.C.M. 1947, 40-5916.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-30-107. Annual statement. Every health service corporation shall file an annual statement on a form containing substantially the same information as that contained in form No. 13 N.A.I.C. with the commissioner of insurance.

History: En. Sec. 1, Ch. 657, L. 1979.

33-30-108 through 33-30-110 reserved.

33-30-111. Notice of violation — conference. If the commissioner shall for any reason have cause to believe that violation of this chapter, except 33-30-1012, has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

History: **En. 40-5920 by Sec. 20, Ch. 319, L. 1975; R.C.M. 1947, 40-5920.**

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of this chapter 30 and to make this chapter apply to it. The Code Commissioner has codified the section in this chapter for logic and convenience, but references in this chapter to "this chapter" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in this chapter, the Code Commissioner has inserted "except 33-30-1012" after "this chapter" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

33-30-112. Cease and desist order. (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, except 33-30-1012.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act.

History: **En. 40-5921 by Sec. 21, Ch. 319, L. 1975; R.C.M. 1947, 40-5921.**

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of this chapter 30 and to make this chapter apply to it. The Code Commissioner has codified the section in this chapter for logic and convenience, but references in this chapter to "this chapter" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in this chapter, the Code Commissioner has inserted "except 33-30-1012" after "this chapter" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

Cross-References

Contested case — administrative proceeding, Title 2, ch. 4, part 6.

33-30-113. Injunctive relief. In the case of any violation of the provisions of this chapter, except 33-30-1012, if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

History: **En. 40-5922 by Sec. 22, Ch. 319, L. 1975; R.C.M. 1947, 40-5922.**

Compiler's Comments

Code Commissioner Addition: Section 15, Ch. 572, L. 1985, was enacted without a codification instruction to make it an integral part of this chapter 30 and to make this chapter apply to it. The Code Commissioner has codified the section in this chapter for logic and convenience, but references in this chapter to "this chapter" do not technically include 33-30-1012. To avoid changing the apparent meaning of the law by such placement in this chapter, the Code Commissioner has inserted "except 33-30-1012" after "this chapter" in this section and certain other sections wherein the meaning would otherwise be particularly affected.

Cross-References

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

Part 2

Finance

33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner shall be maintained in an amount not less than:

(a) $500,000; or

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period.

(4) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

(5) The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.

History: En. 40-5905 by Sec. 5, Ch. 319, L. 1975; R.C.M. 1947, 40-5905.

33-30-202. Annual report. All corporations subject to the provisions of this chapter shall make and file annually with the commissioner, on or before March 1 of each year, a report under oath setting forth:

(1) the name of the corporation;

(2) the address of its registered office in this state and the name of its registered agent at that address;

(3) the names and addresses of its directors and officers;

(4) a brief statement of the character of the affairs which the corporation is actually conducting;

(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;

(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;

(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.

History: En. 40-5911 by Sec. 11, Ch. 319, L. 1975; R.C.M. 1947, 40-5911.

Cross-References

Registered agents — nonprofit corporations, 35-2-302.

33-30-203. Premium tax exemption. A health service corporation is exempt from all premium taxes.

History: En. 40-5915 by Sec. 15, Ch. 319, L. 1975; R.C.M. 1947, 40-5915.

Cross-References

Premium taxes, 33-2-705.

33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) enrollment representative's license:	
(i) application for original license including examination and issuance of license	$10
(ii) annual renewal	$ 5
(b) filing any other statement or report	$ 1
(c) for a certified copy of any document or other paper filed in the office of the commissioner, per page	$.50
(d) for the certificate and for affixing the seal thereto	$ 1
(e) filing of a membership contract	$10
(f) filing of a membership contract package	$25

(g) filing annual report, a fee of 50 cents for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable, except that the minimum fee payable upon filing of an annual report is $100.

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fees and license fees received by him under this section.

History: En. 40-5917 by Sec. 17, Ch. 319, L. 1975; R.C.M. 1947, 40-5917; amd. Sec. 1, Ch. 452, L. 1981.

Compiler's Comments

1981 Amendment: Increased the filing fee in subsection (1)(g) from 20 cents to 50 cents.

Part 3

Operations

33-30-301. Forms — filing, approval, hearing on disapproval, appeal. (1) A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with the commissioner at least 30 days before that form is first used. When a form does not comply with the requirements of this chapter, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within 10 days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than 15 days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this chapter, he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than 30 days after the hearing. The final order is effective 30 days after the hearing.

(2) A corporation whose forms have been ordered discontinued by the commissioner may appeal, within 15 days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section pending trial of the issues or the appeal.

History: En. 40-5906 by Sec. 6, Ch. 319, L. 1975; R.C.M. 1947, 40-5906; amd. Sec. 2, Ch. 452, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "at least 30 days before" for "within 30 days after" in the first sentence of subsection (1).

Cross-References

Contested case — administrative hearing, Title 2, ch. 4, part 6.

Initiating judicial review of administrative proceeding, 2-4-702.

Stays of agency opinions — appeals, 2-4-711.

33-30-302. Allowed contracts. (1) A corporation subject to the provisions of this chapter may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

(a) hospitals maintained by a governmental body or agency;

(b) hospitals maintained by a nonprofit corporation organized for hospital purposes; or

(c) other corporations, organizations, associations, partnerships, or individuals furnishing health services.

(2) A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(a) the transfer of members or beneficiaries;

(b) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations; or

(c) other joint undertakings the corporation's board of directors approves.

History: En. 40-5907 by Sec. 7, Ch. 319, L. 1975; R.C.M. 1947, 40-5907.

33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation.

History: En. 40-5913 by Sec. 13, Ch. 319, L. 1975; R.C.M. 1947, 40-5913.

33-30-304. Nonliability for injuries caused by contractees. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance, or malpractice on the part of any person, organization, agency, or corporation rendering health services to the health service corporation's members and beneficiaries.

History: En. 40-5914 by Sec. 14, Ch. 319, L. 1975; R.C.M. 1947, 40-5914.

33-30-305. Prohibited trade practices. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby.

(2) No person may make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

(3) No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of a health service corporation which is untrue, deceptive, or misleading.

(4) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership contract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(5) No person may file with any public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a health service corporation with intent to deceive.

(6) No person may make any false entry in any book, report, or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom that health service corporation is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that health service corporation in any book, report, or statement of the health service corporation.

(7) No person may make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a health service corporation or of an organization proposing to become a health service corporation and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(8) No person may enter into agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

History: En. 40-5918 by Sec. 18, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(intro.), (1) thru (7).

Cross-References

Civil libel actions, 27-1-802.

Unsworn falsification to authorities — crime, 45-7-203.

Criminal defamation, 45-8-212.

33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited. (1) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder or in any of the terms and conditions of such contract or in any manner whatever.

(2) Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

(3) Nothing contained in subsection (1) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the preauthorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(4) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. 40-5918, 40-5919 by Secs. 18, 19, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(8), 40-5919.

33-30-307. Notice of rate increases — comment to commissioner. (1) A health service corporation must inform members covered under individual plans of any rate increase at least 45 days prior to such increase. Each rate increase notice must include:

(a) a provision notifying the member that he may comment on the rate increase; and

(b) the mailing address of the commissioner.

(2) The premium rate for an individual policy converted from a group plan in accordance with 33-30-1007(3) may not be increased during the first 6 months of coverage of the individual policy.

History: **En. Sec. 2, Ch. 309, L. 1983.**

33-30-308 through 33-30-310 reserved.

33-30-311. Enrollment representative. (1) A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this chapter is an enrollment representative of that corporation.

(2) The definitions of enrollment representative as defined in this chapter do not include an individual:

(a) employed and used by enrollment representatives for the performance of clerical, stenographic, and similar office duties;

(b) employed and used for incidental taking of an application for coverage from time to time in the office of the employing enrollment representative;

(c) who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.

History: **En. 40-5908 by Sec. 8, Ch. 319, L. 1975; R.C.M. 1947, 40-5908.**

33-30-312. Enrollment representative — filing with and approval by commissioner — license. (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state, if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative; and

(b) he qualifies under the provisions of this section.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of 2 years prior to July 1, 1975, if he considers it desirable, the commissioner may require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination shall inquire into an applicant's knowledge of the provisions of this chapter and of the forms submitted and utilized by the employing corporation.

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection.

History: **En. 40-5909 by Sec. 9, Ch. 319, L. 1975; R.C.M. 1947, 40-5909.**

Cross-References
Former criminal offenders — applicability to licensing, Title 37, ch. 1, part 2.

33-30-313. Licenses — refusal to issue — suspension — revocation — hearing. (1) If for cause shown and after a hearing or examination the commissioner determines a person is unsuitable to act as an enrollment representative, he shall:

(a) (i) refuse to issue a license; or

(ii) revoke a license previously issued; and

(b) notify in writing both the appointee and the corporation of refusal.

(2) Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an enrollment representative to act for it, a license issued or a renewal thereof expires on January 1 after its issuance. A license may be renewed annually upon payment of the annual license renewal fee as prescribed in 33-30-204.

(3) The commissioner may suspend, for not more than 12 months, or revoke or refuse to continue any license issued under this chapter if he finds that as to the licensee any one or more of the following causes exist:

(a) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) obtaining or attempting to obtain a license through misrepresentation or fraud;

(c) violation of or noncompliance with applicable provisions of this chapter or willful violation of any lawful rule or order of the commissioner;

(d) misappropriation or conversion to his own use or illegal withholding moneys or property belonging to the health service corporation, its members, beneficiaries, or others and received in conduct of business under the license;

(e) conviction of a felony involving moral turpitude;

(f) fraudulent or dishonest practices in the conduct of his affairs under the license; or

(g) incompetence, untrustworthiness, or injury and loss to the public while acting under the license.

(4) The action taken under subsection (3) shall be the result of a hearing granted the licensee with 20 days' notice. The notice and the reasons for the commissioner's action shall be by certified mail to the licensee and the corporation.

History: En. 40-5910 by Sec. 10, Ch. 319, L. 1975; R.C.M. 1947, 40-5910.

Cross-References
Licensing — applicability of Montana Administrative Procedure Act, 2-4-631.
Felony — definition, 45-2-101.

Parts 4 through 9 reserved

Part 10

Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation. No disability insurance plan or group disability insurance plan issued by a health service corporation may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period.

History: En. Sec. 5, Ch. 74, L. 1973; R.C.M. 1947, 15-2304.1; amd. Sec. 28, Ch. 303, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "which in addition to covering the persons insured also covers members of such a person's family" after "health service corporation" in the first sentence; added the last sentence.

33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance. (1) From and after February 14, 1973, it shall be unlawful for any health service corporation issuing membership contracts in Montana to exclude from coverage in a membership contract services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the membership contract if rendered to him outside a Montana state institution.

(2) A membership contract is considered issued in Montana if the insured purchasing the membership contract is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a membership contract issued in Montana after February 14, 1973, the provision is void and the membership contract will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the membership contract, which would be paid for the services if rendered outside a Montana state institution.

(5) No membership contract issued by a health service corporation on or after July 1, 1979, may deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 3, Ch. 169, L. 1979.

Cross-References

State institutions — list, 53-1-202.

33-30-1003. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738(part), 40-3740.

33-30-1004. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation, by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739(part), 40-3740.

33-30-1005. Right of rescission. Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to whom the contract is issued is not satisfied for any reason, he is permitted to return the contract within 10 days of its delivery, or such longer period as the contract may provide, and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning.

History: En. Sec. 2, Ch. 342, L. 1979.

33-30-1006. Continuing group coverage after termination. A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged the members of the group.

History: En. Sec. 5, Ch. 579, L. 1981.

33-30-1007. Conversion on termination of eligibility. (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy or as a result of an employer discontinuing his business, such person shall, provided he has been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy.

History: En. Sec. 6, Ch. 579, L. 1981; amd. Sec. 1, Ch. 309, L. 1983.

Compiler's Comments

1983 Amendment: At end of (3), inserted "but may not" clause relating to rate of conversion policy.

33-30-1008. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract.

History: En. Sec. 7, Ch. 579, L. 1981.

33-30-1009. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group

policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

History: En. Sec. 8, Ch. 579, L. 1981.

33-30-1010. Renumbered 33-30-1021 by Code Commissioner, 1983.

33-30-1011. Dentists performing services common to both medicine and dentistry. A contract or plan may exclude coverage for dental care or services, but no individual or group membership contract or plan issued or renewed on or after October 1, 1983, may disallow payment to a dentist for health care or services for which a physician would be paid, provided the dentist is licensed under the law of this state to perform such care or service.

History: En. Sec. 1, Ch. 471, L. 1983.

33-30-1012. Coverage for services provided by professional counselors. A health service corporation, if requested, shall provide in group insurance contracts, at an additional cost, coverage for services performed by a licensed professional counselor.

History: En. Sec. 15, Ch. 572, L. 1985.

Compiler's Comments

Enactment Without Codification Instruction: This section was enacted without a codification instruction to make it an integral part of this chapter and the Insurance Code (Title 33, see 33-1-101) and to make this chapter and the Insurance Code apply to it. Therefore, references to "this chapter" in this chapter 30 and to "this code" in this Title 33 do not technically include this section.

Cross-References

Board of Social Work Examiners and Professional Counselors, 2-15-1854.

Professional counseling, Title 37, ch. 23.

33-30-1013 through 33-30-1020 reserved.

33-30-1021. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: En. Sec. 9, Ch. 579, L. 1981; MCA 1981, 33-30-1010; redes. 33-30-1021 by Code Commissioner, 1983.

TITLE 34

RESERVED

TITLE 35

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

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CHAPTER 1

BUSINESS CORPORATIONS

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Part 1

General

35-1-101. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: **En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201.**

35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and such other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute filing under this chapter.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise.

History: En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202; amd. Sec. 1, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (7), inserted language following "corporation" in the first sentence; deleted former subsection (9) defining "treasury shares"; deleted former subsection (10) defining "net assets"; deleted former subsection (11) defining "stated capital"; deleted former subsection (12) defining "surplus"; deleted former subsection (13) defining "earned surplus"; deleted former subsection (14) defining "capital surplus"; deleted former subsection (15) defining "insolvent"; and added a new subsection (10) defining "distribution".

Cross-References

Reduction of tuition charge by tax amount paid within school district by parent shareholder of domestic corporation, 20-5-303, 20-5-313.

35-1-103. Applicability. (1) Every corporation existing, including foreign corporations qualified to do business in this state, on December 31, 1968, shall file an annual report with the secretary of state setting forth the information prescribed by 35-1-1101. The designation of the registered office of the corporation in this state and the address thereof and the designation of its resident agent in this state at such address contained in the first annual report of the corporation shall be in lieu of designating such office and agent in the articles of incorporation of such corporation, and such designation shall continue until changed as provided in 35-1-306.

(2) Any certificates of stock issued by existing corporations after December 31, 1968, shall conform to the requirements of 35-1-610.

(3) The provisions of this chapter are applicable to every corporation unless a special provision is made in relation thereto inconsistent with some provision of this chapter, in which case the special provision prevails.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-104. Application to foreign and interstate commerce. The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the constitution of the United States.

History: En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.

35-1-105. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.

35-1-106. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.

35-1-107. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

History: En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.

Cross-References

Certificate of authority for insurance transactions, 33-2-101.

Name restrictions, 35-1-1006.

35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) lend money and use its credit to assist its employees;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) transact any lawful business in aid of governmental policy;

(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204; amd. Sec. 2, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (6), substituted its language for "(6) lend money to, guarantee the obligations of, and otherwise assist its employees and, upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, lend money to, guarantee the obligations of, and otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares"; in (14), deleted "in time of war" before "transact", and substituted "governmental policy" for "the United States in the prosecution of the war"; deleted former subsection (15) relating to indemnification; and inserted subsection (17).

Cross-References

Acknowledgment of instruments by corporations, 1-5-201 through 1-5-204.

Lack of contractual rights in appointed agent or officer, 35-1-411.

Appointment of agent when corporations joined, 35-1-807.

Activities not considered to be transacting business, 35-1-1002.

General powers of nonprofit corporations, 35-2-107.

Powers of corporations sole, 35-3-205.

Failure to appoint and maintain registered agent, 35-6-102.

35-1-109. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135; amd. Sec. 3, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) which read: "One who assumes an obligation to an ostensible corporation as such cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose."

Cross-References

Stock assessments — delinquency sale, 35-1-604.

35-1-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Disabilities and liabilities of transacting business without a certificate, 35-1-1004.

Involuntary dissolution by Secretary of State, Title 35, ch. 6, part 1.

Reinstatement, Title 35, ch. 6, part 2.

35-1-111. Waiver of notice. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

Cross-References

Director's attendance at meeting as waiver, 35-1-404.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-1-201. Incorporators. One or more persons of legal age or a domestic or foreign corporation may act as incorporator or incorporators of a corporation by signing and delivering one original and one copy of articles of incorporation to the secretary of state.

History: En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247; amd. Sec. 11, Ch. 131, L. 1983; amd. Sec. 9, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131 substituted "one original and one copy of articles of incorporation" for "in duplicate"; and deleted "articles of incorporation for such corporation" at end of section.

Chapter 174, after "signing", deleted ", acknowledging,".

Cross-References

Secretary of State to establish filing fees for articles of incorporation, 35-1-1202.

Special procedure for religious corporations sole, 35-3-208.

35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

History: En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248; amd. Sec. 6, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted language in (1)(c) after "organized"; in (1)(d), deleted "if such shares are to consist of one class only, the par value of each of such shares or a statement that all of such shares are without par value or" after "issue", deleted "and a statement of the par value of the shares of each such class or that such shares are to be without par value" after "class", and made minor changes in grammar; in (1)(g), deleted "or treasury" before "shares"; deleted former subsection (1)(h) relating to matters clarified in (2); inserted subsection (2); and made minor changes in grammar.

35-1-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) One original and one copy of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of incorporation to which he shall affix the copy.

(2) The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249; amd. Sec. 12, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Filing articles of dissolution, 35-1-901.

Filing fees, 35-1-1202.

Articles of incorporation — contents — filing — articles or copies as prima facie evidence, 35-17-202.

Amendments to articles, 35-17-203.

35-1-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. Organization meeting of directors. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

History: En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(h) change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;

(i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

(j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(o) grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

History: En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252; amd. Sec. 7, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2)(e) substituted present language for "increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued"; deleted former subsection (2)(h) relating to changing shares having a par value to shares without par value; in (2)(h), deleted "and whether with or without par value" after "unissued" and deleted "either with or without par value" before "of other classes"; and in (2)(o), deleted "or treasury" before "shares".

Cross-References

Shareholders' preemptive rights, 35-1-511.

License fees based on number of shares in articles, 35-1-1204.

35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) If shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

History: En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253; amd. Sec. 8, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1)(a), substituted "If shares have been issued" for "The" at the beginning of the subsection, and added everything in the subsection after the first sentence; and in (1)(b), deleted the last sentence which read: "If the amendment shall involve an increase of authorized shares, at least 30 days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting."

Cross-References

Appeal from failure of approval of amended articles, 35-1-1304.

35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

(2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

(3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

(4) change the designations, preferences, limitations, or relative rights of the shares of such class. If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class

but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.

(5) change the shares of such class into the same or a different number of shares of the same class or another class or classes;

(6) create a new class of shares having rights and preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class;

(7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(8) limit or deny existing preemptive rights of the shares of such class;

(9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

History: En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254; amd. Sec. 9, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) which read: "(2) increase or decrease the par value of the shares of such class"; in (4), added the second sentence; in (5), deleted "whether with or without par value" before "into the same", and deleted "either with or without par value" after "number of shares"; and in (6), inserted "or the number of authorized shares" before "of any class".

Cross-References

Voting of shares, 35-1-506, 35-1-507.

Voting on merger or consolidation, 35-1-803.

Voting on sale of assets, 35-1-809.

Voting on voluntary dissolution, 35-1-903.

35-1-209. Articles of amendment — contents. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect; and

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

History: En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255; amd. Sec. 10, Ch. 475, L. 1981; amd. Sec. 13, Ch. 131, L. 1983; amd. Sec. 10, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 131, in introduction, deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, in introduction, after "assistant secretary" deleted "and verified by one of the officers signing such articles".

1981 Amendment: In (3), added "or the board of directors when no shares have been issued"; in (5), added "or, if no shares have been issued, a statement to that effect"; deleted former subsection (7) relating to change in stated capital amounts; and made minor changes in grammar.

Cross-References

Amendment filing fees, 35-1-1202.

License fees based on number of shares in articles, 35-1-1204.

Appeal from failure of approval of amended articles, 35-1-1304.

35-1-210. Filing of articles of amendment and issuance of certificate of amendment. (1) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment to which he shall affix the copy.

(2) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256; amd. Sec. 14, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Foreign corporation amendment procedure, 35-1-1015.

Filing fee, 35-1-1202.

Appeal on failure of approval of amended articles, 35-1-1304.

Effect of issuance of certificate, 35-2-209.

Filing of amended articles of incorporation — foreign corporations, 35-2-814.

Special procedure for religious corporations sole, 35-3-206.

35-1-211. Effect of certificate of amendment. (1) An amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History: En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257; amd. Sec. 11, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "An amendment becomes effective upon" for "Upon"; and substituted "or on such ... of amendment" for "the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly".

35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(ii) file the original in his office; and

(iii) issue a certificate of amendment to which he shall affix the copy.

(c) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by

the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

History: En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259; amd. Sec. 12, Ch. 475, L. 1981; amd. Sec. 15, Ch. 131, L. 1983; amd. Sec. 11, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (3)(a), before "by such person or persons" deleted "in duplicate"; in (3)(b), substituted "One original and one copy" for "Duplicate originals"; in (3)(b)(i), substituted "the original and the copy" for "each of such duplicate originals"; in (3)(b)(ii), substituted "the original" for "one of such duplicate originals"; in (3)(b)(iii), substituted "copy" for "other duplicate original"; in (3)(c), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Chapter 174, near beginning of (3)(a), after "executed" deleted "and verified".

1981 Amendment: In (4), inserted "The amendment becomes effective" at the beginning and substituted "or on such later ... articles of amendment" for "the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly".

35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the aggregate number of its shares, issued and unissued, itemized by class and series, if any, within each class, which the corporation has authority to issue at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names, number, or addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation, when executed and filed in the manner prescribed in this chapter for articles of amendment, shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part); amd. Sec. 13, Ch. 475, L. 1981; amd. Sec. 16, Ch. 131, L. 1983; amd. Sec. 12, Ch. 174, L. 1983; amd. Sec. 1, Ch. 456, L. 1983; amd. Sec. 1, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(c) after "names", inserted "number, or".

1983 Amendments: Chapter 131, in (3), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, near beginning of (3), after "assistant secretary" deleted "and verified by one of the officers signing such statement".

Chapter 456, in (1)(a), substituted "aggregate number of its shares, issued and unissued, itemized by class and series, if any, within each class, which the corporation has authority to issue" for "amount of its stated capital".

1981 Amendment: Deleted former subsection (3)(f) relating to change in the amount of stated capital.

Cross-References

Filing fees, 35-1-1202.

Secretary of State to certify restated articles, 35-1-1305.

35-1-214. Bylaws — power in directors — contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "subject to repeal or change by action of the shareholders" after "adopt new bylaws".

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an abbreviation of one of such words, unless one of such words or an abbreviation thereof is added at the end of the corporate name;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state.

History: En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981; amd. Sec. 2, Ch. 456, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1)(a), inserted "unless" clause; and near beginning of (1)(c), inserted "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to".

1981 Amendment: Inserted subsection (1)(a); added language "except that this provision ... in this state" in (1)(c); and added subsection (2).

Cross-References

Exclusivity of assumed business names, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Name of foreign corporation, 35-1-1006, 35-2-805.

Nonprofit corporate names, 35-2-301.

Acquisition of new name on reinstatement, 35-6-203.

Limited partnership name, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-1-302. Reservation of corporate name. (1) The exclusive right to the use of a corporate name may be reserved by:

(a) any person intending to organize a corporation under this chapter;

(b) any domestic corporation intending to change its name;

(c) any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(d) any foreign corporation authorized to transact business in this state and intending to change its name;

(e) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified corporate name. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.

35-1-303. Registration of corporate name. (1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its corporate name is not the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter.

(2) The name must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(3) Such registration shall be made by:

(a) filing with the secretary of state:

(i) an application for registration, executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations;

(b) paying to the secretary of state the required fee.

(4) Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

History: En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209; amd. Sec. 3, Ch. 456, L. 1983; amd. Sec. 2, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: In (3)(b) substituted "the required fee" for "a registration fee in the amount of $1 for each month or fraction thereof between the date of filing such application and December 31 of the calendar year in which such application is filed".

1983 Amendment: In (1), inserted "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to"; and inserted (2).

35-1-304. Renewal of name registration. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the required filing fee. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

History: En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210; amd. Sec. 3, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence, at end, substituted "the required filing fee" for "a fee of $10".

35-1-305. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.

Cross-References

Agent to be named in articles of incorporation, 35-1-202.

35-1-306. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212; amd. Sec. 17, Ch. 131, L. 1983; amd. Sec. 13, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (3), substituted "executing" for "filing"; substituted "and filing one original and one copy" for ", executed in duplicate,"; and made minor phraseology changes.

Chapter 174, in first sentence of (2), after "officer" deleted "thereof, verified by him,".

Cross-References

Business corporation law — applicability, 35-1-103.

Foreign corporations, 35-1-1013, 35-2-812.

Filing fees, 35-1-1202.

Nonprofit corporations, 35-2-303.

Failure to appoint and maintain registered agent — dissolution, 35-6-102.

35-1-307. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.

Cross-References

Personal service on corporation, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process on foreign corporation, 35-1-1014.

Part 4

Directors and Officers

Part Cross-References

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-1-401. Board of directors. (1) All corporate powers shall be exercised by or under authority of and the business and affairs of a corporation shall be managed under the direction of a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action.

History: En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233; amd. Sec. 16, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Substituted first 2 sentences in (1) for "The business and affairs of a corporation shall be managed by a board of directors"; and added subsections (2) through (4).

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

35-1-402. Number, election, and term of directors. (1) The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

History: En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234; amd. Sec. 17, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted the first sentence for "The number of directors of a corporation shall be not less than three", substituted "The number of ... the bylaws" in the second sentence for "Subject to such limitation, the number of directors shall be fixed by the bylaws", and inserted "or in the manner provided in the articles of incorporation or" after "by amendment to" in the third sentence.

35-1-403. Classification of directors and staggered terms. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation or the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting if there be two classes, or until the third succeeding annual meeting if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History: En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.

35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting.

History: **En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239; amd. Sec. 18, Ch. 475, L. 1981.**

Compiler's Comments

1981 Amendment: In (2), inserted "or any committee designated thereby" in three places; and added subsection (3).

35-1-405. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by the articles of incorporation or the bylaws.

History: **En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.**

35-1-406. Action by directors without a meeting. (1) Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the committee, as the case may be, entitled to vote on the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 19, Ch. 475, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), inserted "Unless otherwise provided by the articles of incorporation or bylaws" at the beginning, inserted "or of a committee" after "a meeting of the directors", inserted "or all of the members of the committee, as the case may be" after "by all of the directors", substituted "on" for "with respect to" before "the subject matter", and made minor changes in grammar.

35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

(2) The designation of any such committee, the delegation thereto of authority, or the action by such committee pursuant to such authority does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

History: En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238; amd. Sec. 20, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "except that no such committee shall have the authority to: (a) ... (g) ... under this chapter" for "(2) No such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation"; substituted language in (2) for "(3) The designation of any such committee, and the delegation thereto of authority shall not operate to relieve the board of directors or any member thereof of any responsibility imposed by law".

Cross-References

Amendment of articles or bylaws, 35-1-212, 35-1-214.

35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236; amd. Sec. 21, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "Any director or" at the beginning of the second sentence.

35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, unless he complies with the standard provided in this chapter for the performance of the duties of directors, be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount or value of such distribution in excess of the amount of such distribution which could have been made without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(2) Any director against whom a claim shall be asserted under or pursuant to this section for the making of a distribution and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing such distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director.

History: En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242; amd. Sec. 22, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "imposed bylaw upon directors of a corporation" after "liabilities" near the beginning, substituted "a director" for "(a) Directors of a corporation", deleted "the declaration of any dividend or other" after "assents to", deleted "of the assets of a corporation to its shareholders" before "contrary to the provisions of this chapter", inserted "unless he ... duties of directors" after "articles of incorporation shall", deleted "jointly and severally" before "liable", inserted "jointly ... assenting" after "corporation", deleted "of such dividend which is paid" after "the amount", substituted "distribution" for "assets which are distributed", deleted "dividend or" before "distribution which could", substituted "made" for "paid or distributed", deleted subsections (1)(b) through (1)(d) relating to the joint and several liability of directors, and made minor changes in grammar; deleted former subsections (2) and (3) relating to presumed assent of directors and good faith reliance on financial statements; in (2), substituted "making of a distribution" for "payment of a dividend or other distribution of assets of a corporation", substituted "distribution" for "dividend or assets" after "received any such", and deleted "dividend or" after "knowing such"; and in (3), inserted "and who did not ... director" at the end of the section.

Cross-References

Loans to directors, 35-1-108.

Liability of subscribers and shareholders, 35-1-510.

35-1-410. Officers — appointment — powers and duties. (1) The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History: En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.

35-1-411. Removal of officers. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.

Cross-References

Merger or consolidation of corporations, 35-1-807.

Grounds for involuntary dissolution, 35-6-102.

35-1-412. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter.

History: En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126; amd. Sec. 14, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "Each officer and director of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500."

Cross-References

Penalty imposed upon officers and directors of nonprofit corporation for signing false document, 35-2-413.

False swearing, 45-7-202.

35-1-413. Director conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

History: En. Sec. 23, Ch. 475, L. 1981.

35-1-414. Indemnification of directors and officers. (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)(i), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances

because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a)(i) or (a)(ii) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such committee cannot be established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his duties to the corporation also imposes duties on or

otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or of an employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

History: En. Sec. 4, Ch. 475, L. 1981.

35-1-415. Loans to employees and directors. A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

History: En. Sec. 5, Ch. 475, L. 1981.

Cross-References

Loans to employees and directors of nonprofit corporation, 35-2-107(6).

Loans to employees and officers of religious corporation, 35-3-205(6).

Part 5

Shareholders

35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of business may, on application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226; amd. Sec. 24, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted the second sentence; and in (3), substituted "one-tenth" for "one-half".

35-1-502. Notice of shareholders' meetings. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

History: En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.

35-1-503. Closing of transfer books and fixing record date. (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days.

(2) If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(3) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a

date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(4) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(5) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

History: En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.

35-1-504. Voting list. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and the number of shares held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(3) An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

History: En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.

35-1-505. Quorum of shareholders — voting requirements. (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(2) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

(3) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

(4) Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

History: (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. Voting of shares — proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(3) (a) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

(b) No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be

entitled to vote on any matter and shall not be deemed to be outstanding shares.

History: En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231; amd. Sec. 25, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2), deleted "treasury shares nor" after "Neither"; and in (3), added the second sentence of (b), and added (c) through (h).

Cross-References

Election of directors of railroad corporation, 69-14-501.

Uniform Transfers to Minors Act — powers of custodian, 72-26-701.

35-1-507. Articles to control as to shareholder voting requirements. Whenever with respect to any action to be taken by the shareholders of a corporation the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares or of any class or series thereof than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

History: En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

Cross-References

Class voting on amendments, 35-1-208.

Merger or consolidation approval, 35-1-803.

Sale of assets — approval, 35-1-809.

Voluntary dissolution, 35-1-903.

35-1-508. Voting trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the corporation at its registered office.

(2) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts.

History: En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232; amd. Sec. 26, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), added the last sentence; in (2), inserted "and the copy of such record" near the beginning, inserted "such counterpart and such copy of such record" in the middle, and substituted "record of voting trust certificates" for "a beneficial interest in the voting trust"; and added subsection (3).

35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 27, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "of shareholders" and "as such".

35-1-510. Liability of subscribers and shareholders. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

(4) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History: En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.

Cross-References

Liability of directors in certain cases, 35-1-409.

35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation.

History: En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224; amd. Sec. 28, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or treasury" after "unissued".

35-1-512. Applicability of previous section to existing corporations. Corporations existing before December 31, 1968, whose original or amended articles of incorporation do not deny or limit to the present or future shareholders of any or all classes of stock any preemptive or preferential right to subscribe to any or all additional issues of stock of any or all classes or bonds, debentures, or other obligations convertible into stock shall continue to be subject to such preemptive or preferential right of their present or future shareholders unless and until the articles of incorporation are amended to deny or limit such rights.

History: **En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).**

Cross-References

Statute of Limitations on actions against directors or stockholders, 27-2-211.

Preexisting corporations, 35-1-105.

Amendment of articles, 35-1-206.

35-1-513. Records — shareholder inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors. Each corporation shall keep, at its registered office or principal place of business or at the office of its transfer agent or registrar, a record of its shareholders giving the names and addresses of all shareholders and the number and class of the shares held by each.

(2) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5% of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(3) Any officer or agent who or a corporation which shall refuse to allow any such shareholder or his agent or attorney so to examine and make extracts from its books and records of account, minutes, and record of shareholders for any proper purpose shall be liable to such shareholder for such damages or other remedy as may be afforded him by law and for court costs and attorneys' fees incurred. It shall be a defense to any action under this section that the person suing therefor:

(a) has, within 2 years prior to the demand, sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose; or

(b) has improperly used or intends to improperly use any information secured or to be secured through the demanded inspection or any prior examination of the books and records of account or minutes or record of shareholders of such corporation or any other corporation; or

(c) was not acting and is not acting in good faith or for a proper purpose in making his demand.

(4) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

(5) Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: **En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.**

Cross-References

Books of corporation, fraud in keeping accounts, 45-6-301.

35-1-514. Actions by shareholders. (1) No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

(2) In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

History: **En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.**

35-1-515. Control of directors by shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision, shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that is imposed on directors by this chapter to the extent that and so long as the

discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

History: En. Sec. 29, Ch. 475, L. 1981.

Part 6

Shares

Part Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors.

History: En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214; amd. Sec. 30, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "any or all of which classes may consist of shares with par value or shares without par value" after "classes" in the second sentence, inserted "the State of" before "Montana", and made minor changes in grammar; and in (2)(e), deleted reference to shares without par value not being convertible to shares with par value.

35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted; and

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution; and

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary. The original and one copy of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

History: En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215; amd. Sec. 31, Ch. 475, L. 1981; amd. Sec. 18, Ch. 131, L. 1983; amd. Sec. 15, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (5), deleted "in duplicate" after "executed"; at beginning of second sentence, inserted "The original and one copy of such statement"; in (5)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (5)(b), substituted "the original" for "one of such duplicate originals"; in (5)(c), substituted "copy" for "other duplicate original"; and made minor phraseology changes.

Chapter 174, in first sentence of (5), after "assistant secretary" deleted "and verified by one of the officers signing such statement".

1981 Amendment: Added subsection (1)(f).

Cross-References

Filing fees, 35-1-1202.

35-1-603. Subscriptions for shares — remedies on default in payment. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time or in such installments and at such times as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(3) In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

History: En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. Stock assessments — delinquency sale. The stock of any corporation for profit organized under the laws of this state shall not be assessable for any purpose except as expressly provided by statute and except that water companies, water users associations, irrigation companies, canal companies, ditch companies, and reservoir companies whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by its articles of incorporation or if not so prescribed, then as follows:

(1) No one assessment must exceed 10% of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

(2) No assessment must be levied while any portion of a previous one remains unpaid, unless:

(a) the power of the corporation has been exercised in accordance with the provisions of this section for the purpose of collecting such previous assessment;

(b) the collection of the previous assessment has been enjoined; or

(c) the assessment falls within the provisions of 35-1-109.

(3) Every order levying an assessment must specify the amount thereof, when, to whom, and where payable. It must fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than 30 or more than 60 days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than 15 or more than 60 days from the day the stock is declared delinquent.

(4) Upon the making of the order, the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction and, unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

(5) The notice must be personally served upon each stockholder or, in lieu of personal service, must be sent within 10 days after the assessment through the mail addressed to each stockholder at his place of residence, if known, and, if not known, at the place where the principal office of the corporation is situated and be published once a week for 4 successive weeks in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be

made in some other newspaper of the county if there be one and, if there be none, then in a newspaper published in an adjoining county.

(6) If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice. There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary will be sold at the (particular place) on the (date) at (the hour) of such day to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

(7) The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

(8) The notice when published in a daily paper must be published for 10 days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for 2 weeks previous to the day of sale. The first publication of all delinquent sales must be at least 15 days prior to the day of sale.

(9) By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

(10) On the day, at the place, and at the time appointed in the notice of sale, the secretary must unless otherwise ordered by the board of directors sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale. If payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

(11) The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

(12) If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof at the amount of the assessments, costs, and charges due, and the amount of the assessments, costs, and charges must be credited as paid in full on the books

of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable nor must any dividends be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

(13) The dates fixed in any notice of assessment or notice of delinquent sale published according to the provisions hereof may be extended from time to time for not more than 30 days by order of the directors entered on the records of the corporation, but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

(14) No assessment is invalidated by a failure to make publication of the notices provided for or by the nonperformance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must begin anew.

(15) No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of sale or defect or irregularity in the sale unless the party seeking to maintain such action first pays or tenders to the corporation or the party holding the stock sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within 6 months after such sale was made.

(16) The publication of notice required by this section must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

(17) On the day specified for declaring the stock delinquent or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments or any part or portion thereof and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred or any part or portion thereof.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

Cross-References

Assessments of water users' associations, Title 85, ch. 6.

35-1-605. Issuance of shares. Subject to any restrictions in the articles of incorporation:

(1) shares may be issued for such consideration as may be authorized by the board of directors establishing a price in money or other consideration,

a minimum price, general formula, or method by which the price will be determined; and

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends or splits, and any such transaction does not require consideration, provided that no such issuance of shares of any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

History: En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217; amd. Sec. 32, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Totally rewritten to eliminate the references to par value and stated capital.

Cross-References

Delivery of securities — conversion question, 30-8-318.

35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, subject to the provisions of 35-1-604, such shares shall be nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 33, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "subject to the provisions of 35-1-604", and deleted "deemed to be fully paid and" before "nonassessable".

Cross-References

Merger or consolidation, 35-1-807.

35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or

shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 34, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: At the end of (2), deleted "and set forth or incorporated by reference in the instrument evidencing each such right or option"; and in (3), deleted the last sentence referring to the price of shares having par value.

35-1-608. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609. Expenses of organization, reorganization, and financing. The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

History: En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. Shares represented by certificates and uncertificated shares. (1) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice-chairman of the board of directors or the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. Any or all of the signatures upon a certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents.

(4) No certificate shall be issued for any share until the consideration established for its issuance has been paid.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical.

History: **En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221; amd. Sec. 35, Ch. 475, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), inserted "or shall be uncertificated shares. Certificates shall be", "chairman or vice-chairman of the board of directors or the", and "by the treasurer or an assistant treasurer or", substituted the second sentence for "The signatures of the president or vice-president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar other than the corporation itself or an employee of the corporation", and inserted "transfer agent, or registrar" three times in the last sentence; deleted subsection (3)(d), referring to par value; in (4), substituted "the consideration established for its issuance has been paid" for "such share is fully paid"; and added subsection (5).

Cross-References

Business corporation law — applicability, 35-1-103.

Fraud in issuing or disposing of stock — theft, 45-6-301.

35-1-611. Issuance of fractional shares or scrip. A corporation may:

(1) issue fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable.

History: **En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222; amd. Sec. 36, Ch. 475, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "but shall not be obliged to" after "a corporation may"; substituted subsection (1) for "issue a certificate for a fractional share"; inserted subsections (2) and (3); in (4), deleted "and by action of its board of directors may" before "issue" at the beginning, deleted "in lieu thereof" after "issue", inserted "or an uncertificated full share" in the first sentence, inserted "or an uncertificated fractional share" in the second sentence, and inserted "or uncertificated full shares" in the last sentence.

35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) One original and one copy of the statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

History: En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205; amd. Sec. 37, Ch. 475, L. 1981; amd. Sec. 19, Ch. 131, L. 1983; amd. Sec. 16, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), deleted "in duplicate" after "executed"; in (3), substituted "One original and one copy" for "Duplicate originals"; in (3)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (3)(b), substituted "the original" for "one of such duplicate originals"; in (3)(c), substituted "copy" for "other duplicate original"; and made minor phraseology changes.

Chapter 174, in second sentence of (2), after "assistant secretary" deleted "and verified by one of the officers signing such statement".

1981 Amendment: Section entirely rewritten because of elimination of treasury share concept (form for language see sec. 5, Ch. 300, L. 1967).

Cross-References

Right to cancel shares — power expressed in articles, 35-1-209.

Merger, consolidation, and sale of assets, Title 35, ch. 1, part 8.

35-1-613 through 35-1-616. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-613. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-614. En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.

35-1-615. En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.

35-1-616. En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.

35-1-617. Restriction on transfer of shares. (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

History: **En. Sec. 38, Ch. 475, L. 1981.**

Part 7

Distributions

35-1-701 through 35-1-705. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-701. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-702. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-703. En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.

35-1-704. En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.

35-1-705. En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

35-1-706 through 35-1-710 reserved.

35-1-711. Distributions to shareholders. (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

History: **En. Sec. 39, Ch. 475, L. 1981.**

Part 8

Merger, Consolidation, Share Exchange, and Sale of Assets

35-1-801. Procedure for merger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(ii) the terms and conditions of the proposed merger;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(v) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation, through a voluntary exchange or otherwise, by agreement with the shareholders.

History: En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979; amd. Sec. 40, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Renumbered former subsection (2); and added subsections (2) and (3). Subsection (2) was taken from 35-1-802, which was repealed by the 1981 act.

35-1-802. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.

35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation, or exchange. A copy or a summary of the plan of merger, consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After the approval by a vote of the shareholders of each of these corporations and at any time prior to the filing of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus.

History: En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267; amd. Sec. 41, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "in the case ... of an exchange" near the beginning, and inserted "or exchange"; in (2) inserted "or exchange" twice, and deleted "or plan of" before "consolidation"; in (3), deleted "of merger or consolidation" in four places after "plan", deleted "as the case may be" before "contains any provision which" in the last sentence, and inserted "or, in the case of an exchange, if the class is included in the exchange" at the end; in (4), substituted "of these corporations" for "corporation", inserted "or exchange" twice, and deleted "of merger or consolidation" at the end; added subsection (5); and made minor changes in grammar.

Cross-References

Notice of shareholders' meetings, 35-1-502.

Sale of assets — approval required, 35-1-809.

Dissolution of corporation — vote of shareholders, 35-1-903.

Articles of merger — foreign corporation, 35-1-1016.

Appeal from refusal to approve articles of merger or consolidation, 35-1-1304.

35-1-804. Articles of merger, consolidation, or exchange — contents — filing. (1) Upon receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, consolidation, or exchange shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger, consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) One original and one copy of the articles of merger, consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger, consolidation, or exchange to which he shall affix the copy.

(3) The certificate of merger, consolidation, or exchange, together with the copy of the articles of merger, consolidation, or exchange affixed thereto by the secretary of state, shall be returned to the surviving, new, or acquiring corporation, as the case may be, or its representative.

History: En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 42, Ch. 475, L. 1981; amd. Sec. 20, Ch. 131, L. 1983; amd. Sec. 17, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (1), deleted "in duplicate" after "executed"; in (2), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (2)(b), substituted "the original" for "one of such duplicate originals"; in (2)(c), substituted "copy" for "other duplicate original"; in (3), substituted "copy" for "duplicate original", deleted "or articles of" before "consolidation", and inserted "or exchange" after "consolidation"; and made minor phraseology changes.

Chapter 174, in (1), after "assistant secretary" deleted "and verified by one of the officers of each corporation signing such articles".

1981 Amendment: In (1), substituted "receiving the approvals required by 35-1-801 and 35-1-803" for "such approval", and inserted "or exchange"; in (1)(a), deleted "or the plan of" before "consolidation", and inserted "or exchange"; in (1)(b), inserted "either", and added subsection (1)(b)(ii); in (1)(c), inserted "the approval of whose shareholders is required"; in (2), deleted "or articles of" before "consolidation", and inserted "or exchange"; in (2)(c), deleted "or certificate of" before "consolidation", and inserted "or exchange"; in (3), deleted "or certificate of" before "consolidation", inserted "or exchange", and inserted "or acquiring"; and made several minor changes in punctuation, grammar, and phraseology.

Cross-References

Articles of merger — foreign corporation, 35-1-1016.

Filing fee, 35-1-1202.

35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation; and

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On or after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, one original and one copy of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger to which he shall affix the copy.

(5) The certificate of merger, together with the copy of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative.

History: En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 43, Ch. 475, L. 1981; amd. Sec. 21, Ch. 131, L. 1983; amd. Sec. 18, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (3), deleted "in duplicate" after "executed"; in (4), substituted "One original and one copy" for "Duplicate originals"; in (4)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (4)(b), substituted "the original" for "one of such duplicate originals"; in (4)(c), substituted "copy" for "other duplicate original"; in (5), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Chapter 174, in (3), after "assistant secretary" deleted "and verified by one of its officers signing such articles".

1981 Amendment: In (1)(b), substituted "of any other corporation ... property" for "the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation".

Cross-References

Filing required for foreign corporation, 35-1-1016.

Filing fees, 35-1-1202.

Appeal from refusal to approve articles of merger, 35-1-1304.

35-1-806. Effect of merger, consolidation, or exchange. (1) A merger, consolidation, or exchange becomes effective upon the issuance of a certificate of merger, consolidation, or exchange by the secretary of state or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.

(2) When a merger or consolidation has become effective:

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) the surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the case of a merger or consolidation, or be considered to be exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810.

History: En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269; amd. Sec. 44, Ch. 435, L. 1981.

Compiler's Comments

1981 Amendment: Substituted present subsection (1) for "(1) Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected."; made changes in grammar and punctuation in (2); and added subsection (3).

Cross-References

Effect of merger or consolidation — nonprofit corporations, 35-2-605.

35-1-807. Merger, consolidation, or exchange of shares between domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged, consolidated, or participate in an exchange in the following manner if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

History: En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270; amd. Sec. 45, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In the first sentence, inserted "or participate in an exchange" after "consolidated", and inserted "or exchange" after "consolidation"; in (1), inserted "or exchange" after "consolidation"; in (2), substituted "in a merger or consolidation" for "as the case may be"; deleted former subsections (2) and (3) relating to the effect of merger or consolidation and abandonment of merger or consolidation; and made minor changes in grammar and punctuation.

Cross-References

Removal of officers, 35-1-411.

Acquisition of its own shares by corporation, 35-1-612.

Survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

Change of registered office or agent, 35-1-1013.

Merger or consolidation of domestic and foreign corporations, 35-2-606.

Grounds for involuntary dissolution, 35-6-102.

35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required.

History: En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271; amd. Sec. 46, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "obligations, or other securities" near the end of the first sentence.

Cross-References

Activities not to be considered transacting business, 35-1-1002.

Sale of assets — nonprofit corporations, 35-2-607.

35-1-809. Sale of assets not in regular course of business — shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special

meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

History: En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272; amd. Sec. 47, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "obligations, or other securities" in the first sentence; and deleted subsection (5) relating to amendment of articles of incorporation to give the board of directors authority to dispose of property and assets.

Cross-References

Notice of shareholders' meetings, 35-1-502.

35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from and to obtain payment for his shares in the event of any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3);

(b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(e) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) (a) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and 35-1-812 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

History: En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273; amd. Sec. 48, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "and to obtain payment for his shares in the event of"; in (1)(a), inserted "except as provided in subsection (3)"; added subsections (1)(c) through (1)(e); substituted the first sentence of (2)(a) for "A shareholder may dissent as to less than all of the shares registered in his name"; inserted subsection (2)(b); in (3), substituted "right to obtain payment under" for "provisions of", deleted "such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if" after "merger if"; and added subsection (4).

35-1-811. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.

35-1-812. Procedures for protection of dissenters' rights. (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder or the person on whose behalf the shareholder dissents acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

History: En. Sec. 49, Ch. 475, L. 1981.

Part 9

Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-1-901. Voluntary dissolution by incorporators or initial board of directors — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed by a majority of the incorporators or initial board of directors and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid; and

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) One original and one copy of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(3) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease.

History: En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275; amd. Sec. 50, Ch. 475, L. 1981; amd. Sec. 22, Ch. 131, L. 1983; amd. Sec. 19, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (1), deleted "in duplicate" after "executed"; in (2), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (2)(b), substituted "the original" for "one of such duplicate originals"; in (2)(c), substituted "copy" for "other duplicate original"; in (3), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Chapter 174, in (1), after "board of directors" deleted "and verified by them".

1981 Amendment: Deleted "within 2 years after the date of the issuance of its certificate of incorporation" before "in the following manner"; in (1), inserted "or initial board of directors"; and in (3), inserted "the board of directors".

Cross-References

Filing fees, 35-1-1202.

Appeal from disapproval of articles of dissolution, 35-1-1304.

Articles of dissolution for nonprofit corporations, 35-2-706.

35-1-902. Voluntary dissolution by consent of shareholders — statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation; and

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276; amd. Sec. 23, Ch. 131, L. 1983; amd. Sec. 20, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, in (2), after "assistant secretary and" deleted "verified by one of the officers signing such statement, which statement".

35-1-903. Voluntary dissolution by act of corporation — statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277; amd. Sec. 24, Ch. 131, L. 1983; amd. Sec. 21, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (4), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, in (4), after "assistant secretary and" deleted "verified by one of the officers signing such statement, which statement".

Cross-References

Notice of shareholders' meetings, 35-1-502.

35-1-904. Filing of statement of intent to dissolve. One original and one copy of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

History: En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278; amd. Sec. 25, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In introduction, substituted "One original and one copy" for "Duplicate originals"; in (1), substituted "the original and the copy" for "each of such duplicate originals"; in (2), substituted "the original" for "one of such duplicate originals"; in (3), substituted "copy" for "other duplicate original"; and made minor phraseology changes.

35-1-905. Effect of statement of intent to dissolve. Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided.

History: En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.

35-1-906. Procedure after filing of statement of intent to dissolve — notice to creditors — liquidation. After the filing by the secretary of state of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(2) The corporation shall proceed to:

(a) collect its assets;

(b) convey and dispose of such of its properties as are not to be distributed in kind to its shareholders;

(c) pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and

(d) after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets either in cash or in kind among its shareholders according to their respective rights and interests.

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated to have the liquidation continued under the supervision of the court as provided in this chapter.

History: En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.

Cross-References

Liability of directors on dissolution, 35-1-409.

Shareholders' right to dissent, 35-1-810.

35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281; amd. Sec. 26, Ch. 131, L. 1983; amd. Sec. 22, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, in (2), after "assistant secretary and" deleted "verified by one of the officers signing such statement, which statement".

35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding; and

(f) the number of shares voted for and against the resolution, respectively.

History: En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282; amd. Sec. 27, Ch. 131, L. 1983; amd. Sec. 23, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (4), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, in (4), after "assistant secretary and" deleted "verified by one of the officers signing such statement, which statement".

Cross-References

Notice of shareholders' meeting, 35-1-502.

35-1-909. Filing of statement of revocation of voluntary dissolution proceedings. One original and one copy of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

History: En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283; amd. Sec. 28, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In introduction, substituted "One original and one copy" for "Duplicate originals"; in (1), substituted "the original and the copy" for "each of such duplicate originals"; in (2), substituted "the original" for "one of such duplicate originals"; in (3), substituted "copy" for "other duplicate original"; and made minor phraseology changes.

Cross-References

Filing fees, 35-1-1202.

35-1-910. Effect of statement of revocation of voluntary dissolution proceedings. Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

History: En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and

(6) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate issued by the department of revenue as required by 35-1-928.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 29, Ch. 131, L. 1983; amd. Sec. 24, Ch. 174, L. 1983; amd. Sec. 4, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (6).

1983 Amendments: Chapter 131, in introduction, deleted "in duplicate" after "executed"; and made minor phraseology changes.

Chapter 174, near end of introduction, after "assistant secretary and" deleted "verified by one of the officers signing such statement, which statement".

Cross-References

Filing fees, 35-1-1202.

Appeal from failure of approval of articles of dissolution, 35-1-1304.

35-1-912. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) One original and one copy of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(2) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

History: En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286; amd. Sec. 30, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Filing fees, 35-1-1202.

Filing of articles of dissolution — nonprofit corporations, 35-2-706.

35-1-913 through 35-1-920 reserved.

35-1-921. Power of court to liquidate assets and business of corporation — venue. (1) The district courts shall have full power to liquidate the assets and business of a corporation:

(a) in an action by a shareholder when it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(ii) the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed for a period which includes at least two consecutive annual meeting dates to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(iv) the corporate assets are being misapplied or wasted;

(b) in an action by a creditor when:

(i) the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(ii) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its business and affairs is necessary;

(e) upon filing a verified petition and/or application by a stockholder, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

(2) Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

Cross-References

Appointment of receivers, 27-20-102.

Quo warranto proceedings, Title 27, ch. 28.

Defense of ultra vires, 35-1-110.

Actions by shareholders, 35-1-514.

Power to liquidate nonprofit corporations, 35-2-711.

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-1-922. Procedure in liquidation of corporation by court. (1) In proceedings to liquidate the assets and business of a corporation, the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: **En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.**

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

Liquidation of nonprofit corporations by court, 35-2-712.

35-1-923. Qualifications and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: **En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.**

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-924. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-925. Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-926. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under subsection (1)(e) of 35-1-921, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-927. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state, nor shall the secretary of state file any application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979; amd. Sec. 152, Ch. 575, L. 1981; amd. Sec. 5, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence near middle, after "brought by the", substituted "secretary of state" for "attorney general".

1981 Amendment: Substituted "application for a certificate of withdrawal" for "certificate of surrender".

Cross-References

Withdrawal of foreign corporation, 35-1-1017.

35-1-929. Deposit of amount due certain shareholders upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.

35-1-930. Survival of remedy after dissolution — continuance of corporate existence for certain purposes. (1) The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

(2) Whenever any such corporation is the owner of real or personal property or claims any interest or lien whatsoever in any real or personal property, such corporation shall continue to exist during such 5-year period for the purpose of conveying, transferring, and releasing such real or personal property or interest or lien therein, and such corporation shall continue after the expiration of such 5-year period to exist as a body corporate for the purpose of being made a party to and being sued in any action, suit, or proceeding against it involving the title to any such real or personal property or any interest therein and not otherwise. Any such action, suit, or proceeding may be instituted and maintained against any such corporation as might have been had prior to the expiration of said 5-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action, or proceeding instituted hereunder.

(3) For the purpose of service of any process, notice, or demand within the prescribed time following such dissolution, the secretary of state shall be an agent of the dissolved corporation upon whom service may be made in the manner prescribed in the Montana Rules of Civil Procedure.

History: En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.

Cross-References

Service of process on Secretary of State, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Survival of remedy for nonprofit corporation after dissolution, 35-2-719.

Part 10

Foreign Corporations

35-1-1001. Admission of foreign corporation. (1) No foreign corporation may transact business in this state until it procures a certificate of authority to do so from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).

Cross-References

Foreign nonprofit corporations, Title 35, ch. 2, part 8.

Classification of business trusts as foreign, 35-5-102.

35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2); amd. Sec. 51, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (7), deleted "if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security" after "personal property".

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

35-1-1003. Application to corporations previously authorized to transact business in this state. Foreign corporations which are duly authorized to transact business in this state on December 31, 1968, for a purpose or purposes for which a corporation might secure such authority under this chapter shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and from December 31, 1968, such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

History: En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.

Cross-References

Sale of assets, 35-1-808, 35-1-809.

Sale of nonprofit corporate assets, 35-2-607.

Foreign nonprofit corporations — activities not to be considered transacting business, 35-2-802.

Foreign corporations — rural cooperative utilities, 35-18-107.

35-1-1004. Transacting business without certificate — disabilities and liabilities. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court in this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus a penalty of $5 for each day it transacted business in this state without a certificate of authority. The total penalty shall not exceed $1,000. The county attorney for any county in which a foreign corporation is transacting business without a certificate of authority may bring proceedings to recover all amounts due this state under the provisions of this section. Any money collected in such proceedings shall be paid to the state general fund.

History: En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117; amd. Sec. 1, Ch. 583, L. 1983.

Compiler's Comments

1983 Amendment: In (3), near end of first sentence, after "plus" substituted language through end of sentence for "all penalties imposed by this chapter for failure to pay such fees"; inserted second sentence; in third sentence substituted "county attorney for any county in which a foreign corporation is transacting business without a certificate of authority may" for "attorney general shall"; and inserted last sentence.

Cross-References

Admission of foreign nonprofit corporation, 35-2-801.

Foreign nonprofit corporations — what constitutes conducting affairs, 35-2-802.

Effect of foreign nonprofit corporation conducting business without certificate, 35-2-803.

Foreign nonprofit corporations — effect of certificate, 35-2-809.

35-1-1005. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.

Cross-References

Merger or consolidation of domestic and foreign corporations, 35-1-807.

License fees payable by foreign corporation, 35-1-1205.

35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;

(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of Title 30, chapter 13, part 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state.

History: En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101; amd. Sec. 52, Ch. 475, L. 1981; amd. Sec. 4, Ch. 456, L. 1983.

Compiler's Comments

1983 Amendment: In (3), inserted "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to".

1981 Amendment: Inserted subsection (1); and added language in (3) after "name as provided in this chapter".

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of 35-1-1006.

History: En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102; amd. Sec. 53, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or has otherwise complied with the provisions of 35-1-1006."

35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; and

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary.

History: En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103; amd. Sec. 54, Ch. 475, L. 1981; amd. Sec. 31, Ch. 131, L. 1983; amd. Sec. 25, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), deleted "in duplicate" after "executed".

Chapter 174, at end, after "assistant secretary", deleted "and verified by one of the officers signing such application".

1981 Amendment: Inserted subsection (1)(b); in (1)(e), deleted "proposed" before "registered office"; in (1)(h) and (1)(i), deleted "par value of shares, shares without par value" after "itemized by classes"; deleted former subsection (1)(i) relating to amount of stated capital; and in (2), inserted "made on forms prescribed and furnished by the secretary of state and shall be".

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for certificate, 35-2-807.

Creating instrument — filing — consent of foreign business trust to laws and service of process, 35-5-201.

35-1-1009. Filing of application — issuance of certificate of authority. (1) One original and one copy of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof; and

(b) file in his office the original of the application and the copy of the articles of incorporation and amendments thereto; and

(c) issue a certificate of authority to transact business in this state to which he shall affix the copy of the application.

(3) The certificate of authority, together with the copy of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104; amd. Sec. 55, Ch. 475, L. 1981; amd. Sec. 32, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of such documents"; in (2)(b), substituted "the original" for "one of such duplicate originals"; in (2)(c), substituted "copy of the" for "other duplicate original"; in (3), substituted "copy" for "duplicate original"; and made minor phraseology changes.

1981 Amendment: In (1), substituted "authenticated" for "certified by manual or facsimile signature"; and made minor changes in punctuation.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for certificate, 35-2-807.

Foreign nonprofit corporations — filing of certificate, 35-2-808.

35-1-1010. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

Cross-References

Appeal from failure of approval of certificate, 35-1-1304, 35-2-1103.

Foreign nonprofit corporations — effect of certificate, 35-2-809.

35-1-1011. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of one original and one copy with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111; amd. Sec. 33, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "one original and one copy" for "duplicate originals thereof".

Cross-References

Foreign nonprofit corporations — amended certificate, 35-2-810.

35-1-1012. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business in this state;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

Cross-References

Foreign nonprofit corporations — registered office and agent, 35-2-811.

35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of

the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a foreign corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107; amd. Sec. 34, Ch. 131, L. 1983; amd. Sec. 26, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), substituted "any officer thereof" for "its president or a vice-president"; in (3), substituted "executing" for "filing", substituted "notice of resignation and filing one original and one copy" for "notice thereof, executed in duplicate,", and at end of first sentence in (3), substituted "registered office" for "principal office in the state or county under the laws of which it is incorporated"; and made minor phraseology changes.

Chapter 174, in first sentence of (2), after "any officer thereof" deleted "and verified by him".

Cross-References

Change, 35-1-306.

Change for nonprofit corporations, 35-2-303.

Change for foreign nonprofit corporations, 35-2-812.

35-1-1014. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment, duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state or authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109; amd. Sec. 56, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Added "or authorize ... of authority" to the end of the section.

35-1-1016. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporation as party to merger — filing, 35-2-815.

35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

History: En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979; amd. Sec. 57, Ch. 475, L. 1981; amd. Sec. 27, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In (2), after "assistant secretary" deleted "and verified by one of the officers signing the application", and at end after "trustee" deleted "and verified by him".

1981 Amendment: Inserted subsections (1)(f), (1)(g), and (1)(i); and in (2) substituted "on forms prescribed and furnished" for "in a form prescribed".

Cross-References

Tax clearance certificate required for withdrawal from state, 35-1-928.

Filing fees, 35-1-1202.

Withdrawal of foreign nonprofit corporations, 35-2-816.

35-1-1018. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) One original and one copy of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of withdrawal to which he shall affix the copy.

(2) The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

History: En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113; amd. Sec. 35, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for and issuance of certificate of withdrawal, 35-2-817, 35-2-819.

35-1-1019. Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

(e) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or file the required statement of change of registered agent or registered office or file such articles of amendment or articles of merger or correct such misrepresentation.

History: En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.

Cross-References

Foreign nonprofit corporation — revocation of certificate, 35-2-818.

35-1-1020. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a notice of revocation in duplicate;

(b) file one of such notices in his office;

(c) mail to such corporation at its registered office in this state the duplicate notice of revocation.

(2) Upon the issuance of such notice of revocation, the authority of the corporation to transact business in this state shall cease.

History: En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115; amd. Sec. 5, Ch. 456, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "notice" for "certificate" throughout; and in (1)(c), substituted "the duplicate notice of revocation" for "a notice of such revocation accompanied by one of such certificates".

Cross-References

Foreign nonprofit corporation — effect of revocation, 35-2-819.

Part 11

Annual Reports

35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class; and

(f) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation by such receiver or trustee.

History: En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979; amd. Sec. 58, Ch. 475, L. 1981; amd. Sec. 28, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In last sentence, after "treasurer" deleted "and verified by the officer executing the report", and before "by such receiver" deleted "and verified".

1981 Amendment: In (1)(e) and (1)(f), substituted "class" for "classes, par value of shares, shares without par value", and substituted "each class" for "a class"; deleted subsection (1)(g) relating to amount of stated capital; in (3), deleted "except as to the information required by subsection (1)(g) which must be given as of the close of business on December 31 next preceding the date herein provided for the filing of such report" after "report" in the second sentence; and made minor changes in phraseology.

Cross-References

Business corporation law — applicability, 35-1-103.

Annual reports — nonprofit corporations, 35-2-901.

False financial statements — theft — deceptive practices, 45-6-301, 45-6-317.

35-1-1102. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections. The penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.

Cross-References

Filing fees, 35-1-1202.

Nonprofit corporations' annual reports, 35-2-902.

Grounds for involuntary dissolution — failure to file, 35-6-102.

35-1-1103. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.

Cross-References

Foreign nonprofit corporations — grounds for revocation of certificate of authority, 35-2-818.

Failure as grounds for involuntary dissolution, 35-6-102.

Part 12

Fees and Charges

35-1-1201. Fees and charges to be collected by secretary of state. The secretary of state shall charge and collect in accordance with the provisions of this chapter:

(1) fees for filing documents and issuing certificates;
(2) miscellaneous charges;
(3) license fees.

History: En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120.

35-1-1202. Secretary of state to establish fees commensurate with costs. The secretary of state shall establish fees for filing documents and issuing certificates as required by this chapter. The fees must be reasonably related to the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121; amd. Sec. 59, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: All new language replacing itemized fees. For former text, see Sec. 6, Ch. 152, L. 1969.

35-1-1203. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. License fees payable by domestic corporation. (1) The secretary of state shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

(a) filing articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The license fees shall be at the rate of 10 cents per share up to and including the first 1,000 authorized shares, 8 cents per share for each authorized share in excess of 1,000 shares up to and including 2,500 shares, 6 cents per share for each authorized share in excess of 2,500 shares up to and including 5,000 shares, 4 cents per share for each authorized share in excess of 5,000 shares up to and including 10,000 shares, and 2 cents per share for each authorized share in excess of 10,000 shares.

(3) For the sole purpose of computing the license fee:

(a) with respect to shares having a par value, each $100 unit of the authorized shares shall be counted as one taxable share;

(b) with respect to shares without nominal or par value, such shares shall be deemed equivalent to shares having a par value of $1 each.

(4) However, such license fee shall in no event be less than $50.

(5) The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

History: En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares in an amount equal to the number of authorized shares of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of ½ of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be entitled to employ within this state an amount of capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees.

History: En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124; amd. Sec. 60, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: In (2)(a), deleted "having a par value of $100 per share" after "authorized shares", and substituted "number of authorized shares" for "stated capital".

Cross-References

Fees for business trusts, 35-5-205.

Part 13

Secretary of State

35-1-1301. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.

35-1-1302. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

History: En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.

35-1-1303. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.

Cross-References

Forms for nonprofit corporations, 35-2-1102.

35-1-1304. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall within 10 days after the delivery thereof to him give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is or is proposed to be situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

Cross-References

Nonprofit corporations — appeal, 35-2-1103.

35-1-1305. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: **En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).**

Cross-References

Foreign corporations — same duty, 35-2-1104.

35-1-1306. Certificates and certified copies issued and filed by secretary of state as prima facie evidence of contents. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: **En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.**

Cross-References

Foreign corporations and certified copies — nonprofit corporations, 35-2-1105.

Religious corporations sole — certificate of incorporation, 35-3-203.

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NONPROFIT CORPORATIONS

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Chapter Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Part 1

General

35-2-101. Short title. This chapter shall be known and may be cited as the "Montana Nonprofit Corporation Act".

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301.

35-2-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) "Filed with the secretary of state" shall be deemed to be the time of receipt of a document by him if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute "filing" under this chapter.

History: En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302.

35-2-103. Applicability. (1) The provisions of this chapter relating to domestic corporations shall apply to:

(a) all corporations organized hereunder;

(b) all nonprofit corporations heretofore organized under any act hereby repealed for a purpose or purposes for which a corporation might be organized under this chapter.

(2) The provisions of this chapter relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter.

History: En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

Cross-References

Merged or consolidated corporations, 35-2-606.

Activities not to be considered conducting affairs, 35-2-802.

Rights and duties of foreign corporations, 35-2-804.

Foreign corporations sole, 35-3-102.

35-2-104. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: **En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.**

35-2-105. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: **En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.**

35-2-106. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes.

History: **En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.**

35-2-107. General powers. Each corporation shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and directors and otherwise assist its employees, officers, and directors;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the members after notice;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.

Cross-References

General powers of business corporations, 35-1-108.

Loans to employees and directors, 35-1-415.

Bylaws, 35-2-211.

Election of officers, 35-2-409.

Removal of officers, 35-2-410.

No power to make loans to directors and officers, 35-2-412.

Voting, 35-2-507.

Sale or other disposition of assets, 35-2-607.

Voluntary dissolution, 35-2-701.

Powers of corporation sole, 35-3-205.

35-2-108. Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

History: En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.

Cross-References

Distribution of assets on dissolution and liquidation, 35-2-702, 35-2-712.

35-2-109. Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: **En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.**

Cross-References

Foreign corporations sole, 35-3-102.

35-2-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit against the officers or directors of the corporation for exceeding their authority;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or in any other proceeding by the attorney general.

History: **En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.**

Cross-References

Power of court to liquidate assets and affairs of corporation, 35-2-711.

Activities not to be considered conducting affairs, 35-2-802.

Conducting affairs without certificate of authority, 35-2-803.

35-2-111. Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: **En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.**

Cross-References

Notice of directors' meetings, 35-2-403.

35-2-112. Federal tax laws. In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under this chapter, which is a private foundation as defined in section

509 of the Internal Revenue Code of 1954 as in effect on March 28, 1974, during the period it is a private foundation:

(1) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(2) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(3) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(4) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(5) shall not make any taxable expenditure as defined in section 4945(d) thereof.

History: En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.

Cross-References

Taxes on golf courses owned by Montana nonprofit corporation, 15-6-134.

Tax exempt property, Title 15, ch. 6, part 2.

Tax exempt property categories, 15-6-201.

Exempt securities, 30-10-104.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-2-201. Incorporators. One or more persons may incorporate a corporation by signing and delivering one original and one copy of articles of incorporation to the secretary of state. But no subordinate body shall be incorporated unless such action is approved in writing by the grand head or national body in accordance with its applicable rules and such approval or certified copy thereof is attached to the articles of incorporation submitted to the secretary of state.

History: En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328; amd. Sec. 36, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In middle of first sentence, substituted "one original and one copy of" for "in duplicate".

Cross-References

Directors and officers, Title 35, ch. 2, part 4.

Fees, 35-2-1001.

35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

History: En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979.

Cross-References

Number, election, and term of directors, 35-2-402.

35-2-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) One original and one copy of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of incorporation to which he shall affix the copy.

(2) The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330; amd. Sec. 37, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Amended articles to be filed — foreign corporations, 35-2-814.

Fees, 35-2-1001.

35-2-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

Cross-References

Certificates as prima facie evidence, 35-2-1105.

Religious corporations sole, 35-3-203.

35-2-205. Organization meeting of directors. (1) After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

(2) A first meeting of the members may be held at the call of the directors or a majority of them upon at least 3 days' notice for such purposes as shall be stated in the notice of the meeting.

History: En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

Cross-References

Place and notice of directors' meetings, 35-2-403.

Meetings of members, 35-2-502.

35-2-206. Power to amend articles of incorporation. A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

History: En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting.

History: En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

Cross-References

Notice of members' meetings, 35-2-503.

35-2-208. Articles of amendment. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendment so adopted;

(3) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(4) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

History: En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335; amd. Sec. 38, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In introduction, deleted "in duplicate" after "executed"; and made minor phraseology changes.

35-2-209. Articles of amendment — filing — issuance of certificate of amendment — effect of issuance. (1) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment to which he shall affix the copy.

(2) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(3) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(4) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending action to which such corporation shall be a party or the existing rights of persons other than members. In the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

History: En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336; amd. Sec. 39, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Fees, 35-2-1001.

Certificates as prima facie evidence, 35-2-1105.

35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(b) no statement need be made with respect to the names, number, or addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by one original and one copy of a statement executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office; and

(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law.

History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979; amd. Sec. 40, Ch. 131, L. 1983; amd. Sec. 6, Ch. 445, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(b) after "names", inserted "number, or".

1983 Amendment: In (3), in middle of introduction, substituted "one original and one copy" for "in duplicate"; and made minor phraseology changes.

Cross-References

Fees, 35-2-1001.

Duty of Secretary of State to certify articles, 35-2-1104.

35-2-211. Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

History: **En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.**

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-2-301. Corporate name. (1) The corporate name:

(a) must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, unless one of such words or an abbreviation thereof is added at the end of the corporate name;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(d) shall be transliterated into letters of the English alphabet, if it is not in English.

(2) The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

History: **En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307; amd. Sec. 6, Ch. 456, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (1)(a); and in (1)(c), inserted "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to".

Cross-References

Petition to change name of nonprofit corporation, 27-31-102.

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Reservation or transfer fee, 35-2-1001.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-302. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

History: En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.

35-2-303. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is to be changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is to be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309; amd. Sec. 41, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "any officer thereof" for "its president or a vice-president"; in (3), substituted "executing" for "filing"; substituted "notice of resignation and filing one original and one copy" for "notice thereof, executed in duplicate,"; at end of first sentence in (3), substituted "at its registered office" for "in care of an officer who is not the resigning registered agent at the address of such officer as shown by the most recent annual report of the corporation"; and made minor phraseology changes.

Cross-References

Foreign corporation changes, 35-2-812.

Fees, 35-2-1001.

35-2-304. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Merger or consolidation, 35-2-606.

Part 4

Directors and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-2-401. Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

History: En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.

35-2-402. Number, election, and term of directors. (1) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. If a corporation has no members or its members have no right to vote, the directors shall be elected or appointed by the incumbent directors or by the dignitary, officer, or representative body of any organization or society designated in the articles of incorporation or bylaws.

(3) In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(4) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

History: **En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.**

35-2-403. Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

History: **En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.**

35-2-404. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws.

History: **En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.**

Cross-References

When no members to vote, 35-2-508.

35-2-405. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: **En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).**

35-2-406. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-407. Committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

(a) amending, altering, or repealing the bylaws;

(b) electing, appointing, or removing any member of any such committee or any director or officer of the corporation;

(c) amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger, or adopting a plan of consolidation with another corporation;

(d) authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;

(e) authorizing the voluntary dissolution of the corporation or revoking proceedings therefor;

(f) adopting a plan for the distribution of the assets of the corporation; or

(g) amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

(2) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

History: En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.

35-2-408. Vacancies in board of directors. (1) Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

(2) A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

(3) Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

History: En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.

35-2-409. Officers. (1) The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms, not exceeding 3 years, as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(2) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(3) The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.

35-2-410. Removal of officers. Any officer or agent may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.

35-2-411. Nonliability of directors, officers, and employees. The directors, officers, and employees of the corporation shall not, as such, be liable on its obligations.

History: En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-412. Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

History: En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.

35-2-413. Penalty imposed upon directors and officers for signing false document. Each director and officer of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.

Cross-References

Penalty imposed upon officers and directors of business corporation for signing false documents, 35-1-412.

Filing articles, 35-2-203.

Filing amended articles, 35-2-209.

Articles of merger or consolidation, 35-2-604.

Articles of dissolution, 35-2-705.

Claims in liquidation proceedings, 35-2-714.

Filing of documents for foreign corporations, Title 35, ch. 2, part 8.

Part 5

Members

35-2-501. Members — classes — nonliability. (1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws.

(2) A corporation may issue certificates evidencing membership therein.

(3) The members of the corporation shall not, as such, be liable on its obligations.

History: En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

Cross-References

Survival of remedy after dissolution, 35-2-719.

35-2-502. Meetings of members. (1) Meetings of members may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

History: En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.

35-2-503. Notice of members' meetings. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

History: En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.

35-2-504. Quorum of members — voting requirements. (1) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum.

(2) A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a

greater proportion is required by this chapter, the articles of incorporation, or the bylaws.

(3) Unless otherwise provided by the articles of incorporation or bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(4) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

History: En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.

35-2-505. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the members of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the members than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-506. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the members of a corporation or any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-507. Voting — manner. (1) The right of the members or any class or classes of members to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, is entitled to one vote on each matter submitted to a vote of members.

(2) A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy is valid after 11 months from the date of its execution unless otherwise provided in the proxy. Whenever directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) The articles of incorporation or the bylaws may provide that in all elections for directors, every member entitled to vote has the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or to distribute such votes on the same principle among any number of such candidates.

History: En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.

35-2-508. When no members to vote. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

History: **En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).**

35-2-509. Records to be kept — member inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote.

(2) All books and records of a corporation may be inspected by any member or his agent or attorney for any proper purpose at any reasonable time.

History: **En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.**

Part 6

Merger, Consolidation, and Sale of Assets

35-2-601. Procedure for merger — contents of plan. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: **En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.**

35-2-602. Procedure for consolidation — contents of plan. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: **En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.**

35-2-603. Approval of merger or consolidation. (1) A plan of merger or consolidation shall be adopted in the following manner:

(a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) If any merging or consolidating corporation has no members or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) After such approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.

Cross-References

Notice of members' meetings, 35-2-503.

35-2-604. Articles of merger or consolidation — filing — issuance of certificate of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger or the plan of consolidation;

(b) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(c) if any merging or consolidating corporation has no members or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) One original and one copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

(3) The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

History: **En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341; amd. Sec. 42, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: In middle of introduction in (1), deleted "in duplicate" after "executed"; in (2), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (2)(b), substituted "the original" for "one of such duplicate originals"; in (2)(c), substituted "copy" for "other duplicate original"; in (3), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Foreign corporation party to merger, 35-2-815.

Fees, 35-2-1001.

35-2-605. Effect of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

(1) The several corporations, parties to the plan of merger or consolidation, shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations and all property, real, personal, and mixed, and all debts due on whatever account and all other choses in action and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

History: En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.

35-2-606. Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this state, and in every case it shall file with the secretary of state of this state:

(i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

(3) After approval by the members or, if there be no members entitled to vote thereon, by the board of directors and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.

Cross-References

Filing required, 35-2-815.

Withdrawal of foreign corporation, 35-2-816.

Fees, 35-2-1001.

35-2-607. Sale or other disposition of assets. A sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix or may authorize the board of directors to fix any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

History: **En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.**

Cross-References

Notice of members' meetings, 35-2-503.

Part 7

Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-2-701. Voluntary dissolution — resolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall

be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Upon the adoption of such resolution by the members or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the conclusion thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

History: En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

Cross-References

Notice of members' meetings, 35-2-503.

35-2-702. Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid and discharged or adequate provision shall be made therefor.

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance which condition occurs by reason of the dissolution shall be returned, transferred, or conveyed in accordance with such requirements.

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation pursuant to a plan of distribution adopted as provided in this chapter.

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members or provide for distribution to others.

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

History: En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.

35-2-703. Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the

submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

History: **En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.**

Cross-References

Notice of members' meetings, 35-2-503.

35-2-704. Revocation of voluntary dissolution proceedings. (1) A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

History: **En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.**

Cross-References

Notice of members' meetings, 35-2-503.

35-2-705. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation shall have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, which statement shall set forth:

(1) the name of the corporation;

(2) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(3) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

(6) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter; and

(7) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

History: En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349; amd. Sec. 43, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: Near end of introduction, deleted "in duplicate" after "executed"; and made minor phraseology changes.

Cross-References

Filing fees, 35-2-1001.

Appeal from failure of approval, 35-2-1103.

35-2-706. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) One original and one copy of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(2) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter.

History: En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350; amd. Sec. 44, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

Cross-References

Fees, 35-2-1001.

Appeal from failure of approval, 35-2-1103.

35-2-707 through 35-2-710 reserved.

35-2-711. Power of court to liquidate assets and affairs of corporation — venue. (1) The assets and affairs of a corporation may be liquidated:

(a) in an action by a member or director when it is made to appear:

(i) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and either that the members are unable to break the deadlock or there are no members having voting rights;

(ii) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) that the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(iv) that the corporate assets are being misapplied or wasted; or

(v) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor:

(i) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(ii) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs is necessary;

(e) upon filing a verified petition and/or application by a member, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

(2) Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354; amd. Sec. 153, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The assets and affairs of a corporation may be liquidated" for "Courts of equity shall have full power to liquidate the assets and affairs of a corporation" in (1).

Cross-References

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-2-712. Liquidation by court — procedure — receiver — distribution of assets. (1) In proceedings to liquidate the assets and affairs of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members or any class or classes of members or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter or where no plan of distribution has been adopted, as the court may direct.

(4) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys

in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(5) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: **En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.**

35-2-713. Qualification and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: **En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.**

35-2-714. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: **En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.**

35-2-715. Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: **En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.**

35-2-716. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under 35-2-711(1)(e), the court shall make an order and decree of final distribution and liquidation discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: **En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.**

35-2-717. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: **En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.**

35-2-718. Deposit of amount due certain persons upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: **En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.**

35-2-719. Survival of remedy after dissolution. The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

History: **En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.**

Part 8

Foreign Corporations

35-2-801. Admission of foreign corporation. (1) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is prohibited from conducting.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ

from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: **En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).**

Cross-References

Fees, 35-2-1001.

35-2-802. Activities not to be considered conducting affairs. Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages, or liens on real or personal property;

(5) securing or collecting debts due to it or enforcing any rights in property securing the same;

(6) conducting its affairs in interstate commerce;

(7) granting funds;

(8) distributing information to its members;

(9) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: **En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).**

35-2-803. Conducting affairs without certificate of authority — disabilities and liabilities. (1) No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by this chapter

and thereafter filed all reports required by this chapter, plus all interest and penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

History: **En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.**

Cross-References

Fee for certificate, 35-2-1001.

35-2-804. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: **En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.**

35-2-805. Corporate name. No certificate of authority may be issued to a foreign corporation unless the corporate name of such corporation:

(1) contains, or there is added at the end of the name, the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words;

(2) does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(3) is not the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(4) is transliterated into letters of the English alphabet, if it is not in English.

History: **En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365; amd. Sec. 7, Ch. 456, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (1); and in (3), inserted "any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to"; and made minor changes in phraseology.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Fees, 35-2-1001.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-806. Change of name. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state.

History: **En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-807. Application for certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state;

(f) the names and respective addresses of the directors and officers of the corporation; and

(g) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary.

History: **En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367; amd. Sec. 45, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), deleted "in duplicate" after "executed"; and made minor phraseology changes.

Cross-References

Fees, 35-2-1001.

35-2-808. Filing of application — issuance of certificate of authority. (1) One original and one copy of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application and the copy of the articles of incorporation and amendments thereto; and

(c) issue a certificate of authority to conduct affairs in this state to which he shall affix the copy of the application.

(3) The certificate of authority, together with the copy of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368; amd. Sec. 46, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (2)(a), substituted "the original and the copy" for "each of such documents"; in (2)(b), substituted "the original" for "one of such duplicate originals"; in (2)(c), substituted "copy of the" for "other duplicate original"; in (3), substituted "copy" for "duplicate original"; and made minor phraseology changes.

35-2-809. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.

35-2-810. Amended certificate of authority. (1) A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of one original and one copy with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375; amd. Sec. 47, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "one original and one copy" for "duplicate originals thereof".

35-2-811. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or

conduct affairs in this state having an office identical with such registered office.

History: **En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.**

35-2-812. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office be changed, the address to which the registered office is to be changed;

(d) the name of its registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a foreign corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the foreign corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: **En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371; amd. Sec. 48, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), substituted "any officer thereof" for "its president or a vice-president"; in (3), substituted "registered agent of" for "registered agent in this state appointed by"; substituted "executing" for "filing"; substituted "notice of resignation and filing one original and one copy" for "notice thereof, executed in duplicate,"; at end of first sentence in (3), substituted "registered office" for "principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report"; and made minor phraseology changes.

35-2-813. Service of process on foreign corporation. Service of process on foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: **En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.**

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-2-814. Filing required of amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this state or authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority.

History: En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.

35-2-815. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

History: En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.

35-2-816. Withdrawal. (1) A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not conducting affairs in this state;

(c) that the corporation surrenders its authority to conduct affairs in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

(2) The application for withdrawal shall be made on forms prescribed by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

History: **En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.**

35-2-817. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) One original and one copy of the application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of withdrawal to which he shall affix the copy.

(2) The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

History: **En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377; amd. Sec. 49, Ch. 131, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "Duplicate originals"; in (1)(a), substituted "the original and the copy" for "each of such duplicate originals"; in (1)(b), substituted "the original" for "one of such duplicate originals"; in (1)(c), substituted "copy" for "other duplicate original"; in (2), substituted "copy" for "duplicate original"; and made minor phraseology changes.

35-2-818. Revocation of certificate of authority — grounds — notice. (1) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter;

(e) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(f) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(g) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or penalties or file the required statement of change of registered agent or file such articles of amendment or articles of merger or correct such misrepresentation.

History: **En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.**

35-2-819. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a notice of revocation in duplicate;

(b) file one of such notices in his office;

(c) mail to such corporation at its registered office in this state the duplicate notice of revocation.

(2) Upon the issuance of such notice of revocation, the authority of the corporation to conduct affairs in this state shall cease.

History: **En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379; amd. Sec. 8, Ch. 456, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "notice" for "certificate" throughout; and in (1)(c), substituted "the duplicate notice of revocation" for "a notice of such revocation accompanied by one of such certificates".

Cross-References

Appeal of failure to approve certificate, 35-2-1103.

Part 9

Annual Reports

35-2-901. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to conduct affairs in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the affairs which the corporation is actually conducting or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(d) the names and respective addresses of the directors and officers of the corporation.

(2) Such annual report shall be made on forms prescribed by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or

if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

History: En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381.

35-2-902. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.

Cross-References

Fees, 35-2-1001.

35-2-903. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.

Part 10

Fees and Charges

35-2-1001. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this chapter and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979; amd. Sec. 7, Ch. 119, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present language for "The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $20;

(2) filing articles of amendment and issuing a certificate of amendment, $20;

(3) filing restated articles of incorporation and issuing restated certificate of incorporation, $20;

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $20;

(5) filing an application to reserve a corporate name, $2;

(6) filing a notice of transfer of a reserved corporate name, $2;

(7) filing a statement of change of address of registered office or change of registered agent, or both, $2;

(8) filing articles of dissolution and issuing a certificate of dissolution, $5;

(9) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, $20;

(10) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, $20;

(11) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, $10;

(12) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, $20;

(13) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $5;

(14) filing an annual report, $5;

(15) filing any other statement or report, except an annual report, of a domestic or foreign corporation, $2."

35-2-1002. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.

Cross-References

Certification of copy of documents, 35-2-1104.

Part 11

Secretary of State

35-2-1101. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.

35-2-1102. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.

35-2-1103. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is or is proposed to be situated or in the district court of Lewis and Clark County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.

35-2-1104. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).

35-2-1105. Certificates and certified copies as prima facie evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.

35-2-1106. Secretary of state to notify corporation of expiration of existence. The secretary of state shall notify every corporation, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

History: En. Sec. 1, Ch. 256, L. 1981.

Part 12

Reinstatement

35-2-1201. Reinstatement of corporation whose term has expired. (1) The secretary of state may:

(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration.

History: En. Sec. 2, Ch. 256, L. 1981; amd. Sec. 50, Ch. 131, L. 1983; amd. Sec. 29, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), substituted "one original and one copy of the" for "in duplicate an".

Chapter 174, in (2), after "executed" deleted "and verified".

35-2-1202. Relation back of corporate rights. Any restoration of corporate rights pursuant to 35-2-1201 relates back to the date the corporation expired, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.
History: En. Sec. 3, Ch. 256, L. 1981.

35-2-1203. Acquisition of new name. In all cases where a corporation's term has expired and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement, such expired corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from those of all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.
History: En. Sec. 4, Ch. 256, L. 1981.

CHAPTER 3

RELIGIOUS CORPORATIONS SOLE

Part 1 — General

Section
35-3-101. Short title.
35-3-102. Applicability.
35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred.

Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
35-3-202. Articles of incorporation.
35-3-203. Effect of issuance of certificate of incorporation.
35-3-204. Unauthorized assumption of corporate powers — liability.
35-3-205. Powers of corporation sole.
35-3-206. Amendment of articles of incorporation.
35-3-207. Succession.
35-3-208. Board of advisors or consultors — interim powers.
35-3-209. Annual report.

Chapter Cross-References
Tax exempt property, Title 15, ch. 6, part 2.
Montana Nonprofit Corporation Act, Title 35, ch. 2.

Part 1

General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".
History: En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: **En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).**

Cross-References

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Nonprofit foreign corporations, Title 35, ch. 2, part 8.

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: **En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.**

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: **En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.**

35-3-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which he presides or over which his jurisdiction extends and the facts authorizing such incorporation;

(e) the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules or discipline of such religious denomination, society, or church, shall be filled;

(f) any provisions, not inconsistent with law, which the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its initial registered office and the name of its initial registered agent at such address;

(h) the name and address of the incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles shall be verified by affidavit of the incorporator, and he shall also file the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed as sufficient attestation thereof.

History: **En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404.**

Cross-References

Filing fees, 35-2-1001.

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: **En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.**

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: **En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.**

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust hereinafter mentioned, shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, provided that all such property shall be in trust for the use, purpose, and benefit of such religious denomination, society, or church for which and in whose behalf such corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or his successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Exempt securities, 30-10-104.

General powers of business corporations, 35-1-108.

General powers of nonprofit corporations, 35-2-107.

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments thereto or under this chapter, such corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

(2) Such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such amendment and the date upon which said amendment was promulgated, and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

History: En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410.

Cross-References

Fees, 35-2-1001.

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of his transfer or removal therefrom by the person or body having the authority to remove him, his successor in office shall succeed to the powers, rights, and obligations of the office and shall become vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) Succession shall be effected when the successor shall file in the office of the secretary of state the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed sufficient attestation thereof.

History: En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407.

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: **En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.**

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report shall be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by such chief corporate officer.

History: **En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409.**

Cross-References

Corporations subject to provision, 35-3-102.

CHAPTER 4

MONTANA PROFESSIONAL CORPORATION ACT

Part 1 — General

Section

35-4-101 through 35-4-107. Repealed.
35-4-108. Short title.
35-4-109. Definitions.
35-4-110. Application to existing corporations.
35-4-111. Application of the Montana Business Corporation Act.

Part 2 — Organization and Regulation

35-4-201 through 35-4-204. Repealed.
35-4-205. Purposes of corporation.
35-4-206. Corporate name.
35-4-207. Directors and officers.
35-4-208. Filing of articles with licensing authority.
35-4-209. Annual reports and statements.
35-4-210 reserved.
35-4-211 through 35-4-216. Repealed.

Part 3 — Shares and Shareholders

35-4-301. Issuance and transfer of shares.
35-4-302. Corporation's right to acquire its own shares.
35-4-303. Proxies and voting trusts.
35-4-304 through 35-4-310 reserved.
35-4-311. Death or disqualification of a shareholder.
35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate.

Part 4 — Operation

35-4-401. General powers.
35-4-402. Prohibited activities.
35-4-403. Rendering services.
35-4-404. Responsibility for services.
35-4-405. Relationship to clients or patients — privileged communications.
35-4-406 through 35-4-410 reserved.
35-4-411. Admission of foreign professional corporations — application — revocation.

Part 5 — Reorganization and Dissolution

35-4-501. Merger and consolidation.
35-4-502. Termination of all professional services.
35-4-503. Involuntary dissolution.

Chapter Cross-References

Professional and occupational licensing, Title 37.

Part 1

General

35-4-101 through 35-4-107. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-101. En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.

35-4-102. En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.

35-4-103. En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.

35-4-104. En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.

35-4-105. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-106. En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.

35-4-107. En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.

35-4-108. Short title. This chapter may be cited as the "Montana Professional Corporation Act".

History: En. Sec. 1, Ch. 399, L. 1983.

Cross-References

Short title, 35-1-101.

35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation.

History: En. Sec. 2, Ch. 399, L. 1983.

Cross-References

Definitions, 35-1-102.

35-4-110. Application to existing corporations. (1) This chapter applies to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to this chapter by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendments of its corporate name or purposes as are required to comply with this chapter.

History: En. Sec. 3, Ch. 399, L. 1983.

35-4-111. Application of the Montana Business Corporation Act. The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with this chapter.

History: En. Sec. 4, Ch. 399, L. 1983.

Cross-References

Montana Business Corporation Act — applicability, 35-1-103.

Part 2

Organization and Regulation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-4-201 through 35-4-204. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections;

35-4-201. En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112; amd. Sec. 154, Ch. 575, L. 1981.

35-4-202. En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.

35-4-203. En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.

35-4-204. En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.

35-4-205. Purposes of corporation. Professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.

History: En. Sec. 6, Ch. 399, L. 1983.

Cross-References

Permissible purposes for incorporation, 35-1-107.

35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

History: En. Sec. 12, Ch. 399, L. 1983.

Cross-References

Reservation of corporate name, 35-1-302.

Service of process on foreign corporation, 35-1-1014.

35-4-207. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

History: En. Sec. 13, Ch. 399, L. 1983.

Cross-References

Effect of issuance of certificate of incorporation, 35-1-204.

Classification of directors and staggered terms, 35-1-403.

35-4-208. Filing of articles with licensing authority. No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in this chapter restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

History: En. Sec. 5, Ch. 399, L. 1983.

35-4-209. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 23, Ch. 399, L. 1983.

35-4-210 reserved.

35-4-211 through 35-4-216. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-211. En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

Part 3

Shares and Shareholders

35-4-301. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

History: En. Sec. 14, Ch. 399, L. 1983.

Cross-References

Liability of subscribers and shareholders, 35-1-510.

Shareholders preemptive rights, 35-1-511.

Issuance of shares of preferred or special classes in series — filing of statement, 35-1-602.

Expenses of organization, reorganization, and financing, 35-1-609.

35-4-302. Corporation's right to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

History: **En. Sec. 15, Ch. 399, L. 1983.**

Cross-References

Defense of ultra vires, 35-1-110.

35-4-303. Proxies and voting trusts. No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

History: **En. Sec. 18, Ch. 399, L. 1983.**

Cross-References

Board of Directors, 35-1-401.

Number, election, and term of directors, 35-1-402.

35-4-304 through 35-4-310 reserved.

35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after such death or 30 days after such disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value thereof as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within such other period as the parties fix by agreement and upon surrender of the certificate or certificates representing such shares. Upon payment the transferor ceases to have any interest in such shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation must within the next 30 days file a petition in the district court of the county in this state where the registered office of the corporation is located, requesting that the fair value of such shares be

found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of his shares as of the date of death, disqualification, or transfer and upon payment of the judgment must surrender to the corporation the certificates representing the shares. The court may in its discretion order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered therefor or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than his right under this section to payment for such shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

History: **En. Sec. 16, Ch. 399, L. 1983.**

Cross-References

Revocation of voluntary dissolution proceedings by consent of shareholders, 35-1-907.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate. A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;
(2) the amendments adopted;
(3) the date of adoption of the amendments; and
(4) the number of shares outstanding.

History: En. Sec. 17, Ch. 399, L. 1983.

Cross-References

Restated articles of incorporation, 35-1-213.

Duty of Secretary of State to certify copy of articles or amendments, 35-1-1305.

Part 4

Operation

35-4-401. General powers. (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

History: En. Sec. 8, Ch. 399, L. 1983.

Cross-References

General powers, 35-1-108.

35-4-402. Prohibited activities. A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

History: En. Sec. 7, Ch. 399, L. 1983.

35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

History: En. Sec. 9, Ch. 399, L. 1983.

35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

History: En. Sec. 10, Ch. 399, L. 1983.

Cross-References

Bylaws — power in directors — content, 35-1-214.

35-4-405. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

History: En. Sec. 11, Ch. 399, L. 1983.

35-4-406 through 35-4-410 reserved.

35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) No foreign professional corporation is required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

History: En. Sec. 22, Ch. 399, L. 1983.

Cross-References

Registered office and registered agent of foreign corporation, 35-1-1012.

Part 5

Reorganization and Dissolution

35-4-501. Merger and consolidation. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with this chapter.

History: En. Sec. 19, Ch. 399, L. 1983.

Cross-References

Sale of assets in regular course of business and mortgage or pledge of assets, 35-1-808.

Sale of assets not in regular course of business — shareholder approval, 35-1-809.

Voluntary dissolution by act of corporation — statement of intent, 35-1-903.

35-4-502. Termination of all professional services. If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to this chapter.

History: En. Sec. 20, Ch. 399, L. 1983.

35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

History: En. Sec. 21, Ch. 399, L. 1983.

Cross-References

Discontinuance of liquidation proceedings, 35-1-925.

Decree of involuntary dissolution in proceedings to liquidate, 35-1-926.

CHAPTER 5

BUSINESS TRUSTS

Part 1 — General

Section

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.

35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Chapter Cross-References
Agency, Title 28, ch. 10.
Trusts in general, Title 72, ch. 20.

Part 1

General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.

Cross-References
General corporate law — applicability, Title 35, ch. 1.

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1008 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2).

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Service of process on foreign corporation, 35-1-1014.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).

Cross-References

Fees, 35-1-1201, 35-1-1202.

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.

Cross-References

Fees, 35-1-1202.

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay such taxes and fees as are imposed by the laws, ordinances, and regulations of this state and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith.

History: En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507.

Cross-References

Corporate license tax, Title 15, ch. 31, part 1.

Corporate income tax, generally, Title 15, ch. 31, part 4.

CHAPTER 6

INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

Section
35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement

35-6-201. Reinstatement of dissolved corporation.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Chapter Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Part 1

Dissolution by Secretary of State

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

Cross-References

Defense of ultra vires, 35-1-110, 35-2-110.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before April 1, August 1, and September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the posting and mailing or publication of notice:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following posting and mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 35-1-921 or 35-2-711, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

History: En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979.

Part 2

Reinstatement

35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979; amd. Sec. 51, Ch. 131, L. 1983; amd. Sec. 30, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 131, in (2), substituted "one original and one copy of the" for "in duplicate an"; and made minor phraseology changes.

Chapter 174, in (2), after "executed" deleted "and verified".

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: **En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).**

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: **En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

PARTNERSHIPS IN GENERAL

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35-10-614. Rights of retiring or estate of deceased partner when the business is continued.
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Part 1

Preliminary Provisions

35-10-101. Short title. This chapter may be cited as "Uniform Partnership Act".

History: **En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.**

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act.

(2) "Business" includes every trade, occupation, or profession.

(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(4) "Court" includes every court and judge having jurisdiction in the case.

(5) "Person" includes individuals, partnerships, corporations, and other associations.

(6) "Real property" includes land and any interest or estate in land.

History: En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102.

35-10-103. Interpretation of knowledge and notice. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence.

History: En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103.

35-10-104. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947.

History: En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104.

Cross-References

Agency, Title 28, ch. 10.

Unauthorized corporate acts — estoppel, 35-1-110, 35-2-110.

Partner by estoppel, 35-10-308.

35-10-105. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

History: En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105.

Cross-References

Equitable principles, Title 1, ch. 3.

Maxims of jurisprudence, Title 1, ch. 3, part 2.

Uniform Commercial Code, Title 30, ch. 1 through 9.

Part 2

Nature of Partnership

35-10-201. Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106.

Cross-References

Limited partnerships, Title 35, ch. 12.

35-10-202. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by 35-10-308 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that such person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise;

(b) as wages of an employee or rent to a landlord;

(c) as an annuity to a surviving spouse or representative of a deceased partner;

(d) as interest on a loan, though the amount of payment varies with the profits of the business;

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107.

Cross-References

Nature of a partner's rights in specific partnership property, 35-10-502.

35-10-203. Partnership property. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108.

Cross-References

Property assessment, 15-8-402, 15-8-403.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

Part 3

Relation of Partner and Partnership to Other Persons

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-301. Partner as agent of partnership — restrictions on partner's authority. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201.

Cross-References

Partner's application to discharge attachment, 35-10-506.

Changes in partner's authority, 35-10-605, 35-10-606.

35-10-302. Conveyance of real property of the partnership. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but the partnership may recover such property unless the partner's act binds the partnership under the provisions of 35-10-301(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name passes the equitable interest

of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

History: En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202.

Cross-References

Fraudulent conveyance of partnership property, 31-2-317.

Partnership property, 35-10-203.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

35-10-303. Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

History: En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.

35-10-304. Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

History: En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.

Cross-References

Knowledge of dissolution, 35-10-606.

35-10-305. Partnership liable for partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person not being a partner in the partnership or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

History: En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205.

35-10-306. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

History: **En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.**

Cross-References

Grounds for dissolution, 35-10-604.

Power to bind partnership to third persons after dissolution, 35-10-607.

35-10-307. Nature of partner's liability. All partners are liable:

(1) jointly and severally for everything chargeable to the partnership under 35-10-305 and 35-10-306;

(2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

History: **En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207.**

Cross-References

Liability of limited partner, 35-12-607, 35-12-703, 35-12-902, 35-12-1008.

35-10-308. Partner by estoppel. (1) When a person by words spoken or written or by conduct represents himself or consents to another representing him to anyone as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made. When a partnership liability results, he is liable as though he were an actual member of the partnership. When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results, but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

History: **En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208.**

Cross-References

Rules for determining the existence of a partnership, 35-10-202.

Power of partner to bind partnership to third persons after dissolution, 35-10-607.

35-10-309. Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

History: **En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209.**

Cross-References

Liability of persons continuing business after dissolution, 35-10-613.

Part 4

Relation of Partners to Partnership and to One Another

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-401. Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

History: **En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301.**

Cross-References

Property rights, Title 35, ch. 10, part 5.

Right of partner to contribution from copartners after dissolution, 35-10-606.

Right when partnership contract is rescinded for fraud or misrepresentation, 35-10-611.

Rules for distribution — payment priorities, 35-10-612.

35-10-402. Partnership books — inspection rights. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

History: **En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302.**

Cross-References

Assignment of partner's interest, 35-10-504.

35-10-403. Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History: **En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303.**

35-10-404. Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

(1) if he is wrongfully excluded from the partnership business or possession of its property by his copartners;

(2) if the right exists under the terms of any agreement;

(3) as provided by 35-10-405;

(4) whenever other circumstances render it just and reasonable.

History: **En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.**

Cross-References

Assignment of partner's interest, 35-10-504.

Accrual of right to account, 35-10-615.

35-10-405. Partner accountable as a fiduciary for benefit derived without consent. (1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History: **En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304.**

35-10-406. Rights and duties of partners when partnership continues beyond fixed term. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is prima facie evidence of a continuation of the partnership.

History: **En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306.**

Cross-References

Assignment of partner's interest, 35-10-504.

Dissolution and winding up, Title 35, ch. 10, part 6.

Part 5

Property Rights of a Partner

Part Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

Status of creditors after dissolution, 35-10-613.

Limited partner's interest, 35-12-702, 35-12-705.

35-10-501. Classification of property rights of a partner. The property rights of a partner are:

(1) his rights in specific partnership property;

(2) his interest in the partnership; and

(3) his right to participate in the management.

History: En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. Nature of a partner's rights in specific partnership property. (1) A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes but has no right to possess such property for any other purpose without the consent of the other partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner that partner's right in specific partnership property vests in the surviving partner or partners except where the deceased was the last surviving partner, in which case such deceased partner's right in such property vests in the deceased's legal representative. Such surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property for any but a partnership purpose.

(e) Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate, such property is not subject to a lien of the surviving spouse for his or her elective share or a lien for or allowances to surviving spouses, heirs, or next of kin.

History: En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.

35-10-503. Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus and the same is personal property.

History: En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.

Cross-References
Nature of partner's interest in limited partnership, 35-12-1101.

35-10-504. Assignment of partner's interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership or as against the other partners in the absence of agreement entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs or to require any information or account of partnership transactions or to inspect the partnership books. It merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

History: En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.

Cross-References
Dissolution by decree of court, 35-10-604.

35-10-505. Partner's interest subject to charging order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

History: En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405.

Cross-References
Dissolution by decree of court, 35-10-604.

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered

against the partner who is defendant in the action or which may be recovered against him in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979.

Cross-References

Restrictions on partner's authority, 35-10-301.

35-10-507. Repealed. Sec. 12, Ch. 202, L. 1979.

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R.C.M. 1921; re-en. Sec. 9425, R.C.M. 1935; amd. Sec. 11-165, Ch. 264, L. 1963; R.C.M. 1947, 93-5811.

Part 6

Dissolution and Winding Up

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-10-601. Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

History: En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.

Cross-References

Appointment of receiver, 27-20-102.

35-10-602. Partnership not terminated by dissolution. On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed.

History: En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502.

35-10-603. Causes of dissolution. (1) Dissolution is caused, without violation of the agreement between the partners by:

(a) the termination of the definite term or particular undertaking specified in the agreement;

(b) the express will of any partner when no definite term or particular undertaking is specified;

(c) the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

(2) Dissolution is caused, in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

(3) Dissolution is caused by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

(4) Dissolution is caused by the death of any partner.

(5) Dissolution is caused by the bankruptcy of any partner or the partnership.

(6) Dissolution is caused by decree of court under 35-10-604.

History: En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.

35-10-604. Dissolution by decree of court. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) a partner is declared seriously mentally ill in a judicial proceeding or is shown to be mentally incompetent;

(b) a partner becomes in any other way incapable of performing his part of the partnership contract;

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(d) a partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(e) the business of the partnership can only be carried on at a loss; or

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under 35-10-504 or 35-10-505, the court shall decree a dissolution:

(a) after the termination of the specified term or particular undertaking;

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the order charging such interest was issued.

History: En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.

Cross-References

Partnership bound by partner's breach of trust, 35-10-306.

35-10-605. General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) with respect to the partners:

(a) when the dissolution is not by the act, bankruptcy, or death of a partner; or

(b) when the dissolution is by such act, bankruptcy, or death of a partner in cases where 35-10-606 so requires;

(2) with respect to persons not partners, as declared in 35-10-607.

History: **En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.**

35-10-606. Right of partner to contribution from copartners after dissolution. Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: **En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.**

35-10-607. Power of partner to bind partnership to third persons after dissolution. (1) After dissolution a partner can bind the partnership, except as provided in subsection (3):

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs;

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs, except by a transaction with one who:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) had not extended credit to the partnership prior to dissolution and having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)(ii).

(4) Nothing in this section shall affect the liability under 35-10-308 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History: En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.

Cross-References

Partnership by estoppel, 35-10-308.

35-10-608. Effect of dissolution on partner's existing liability. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor, and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

History: En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.

Cross-References

Rights and duties of partners — indemnification, 35-10-401.

35-10-609. Right to wind up. Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. However, any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

History: En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509.

35-10-610. Rights of partners after dissolution to application of partnership property or to continue business. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under 35-10-608(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(i) all the rights specified in subsection (1) of this section; and

(ii) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name either by themselves or jointly with others, may do so during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court or pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under (2)(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) if the business is not continued under the provisions of (2)(b), all the rights of a partner under (1), subject to (2)(a)(ii) of this section;

(ii) if the business is continued under (2)(b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid him in cash or the payment secured by bond approved by the court and to be released from all existing liabilities of the partnership, but in ascertaining the value of the partner's interest, the value of the goodwill of the business shall not be considered.

History: En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Rights and duties of partners — indemnification, 35-10-401.

Property rights of a partner, Title 35, ch. 10, part 5.

35-10-611. Rights when partnership contract is rescinded for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled to:

(1) a lien on or right of retention of the surplus of the partnership property, after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect to the partnership liabilities; and

(3) be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

35-10-612. Rules for distribution — payment priorities. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) the partnership property;

(b) the contributions of the partners necessary for the payment of all the liabilities specified in subsection (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) those owing to creditors other than partners;

(b) those owing to partners other than for capital and profits;

(c) those owing to partners in respect of capital;

(d) those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by 35-10-401(1), the amount necessary to satisfy the liabilities; but if any but not all of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subsection (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors.

(9) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) those owing to separate creditors;

(b) those owing to partnership creditors;

(c) those owing to partners by way of contribution.

History: **En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.**

35-10-613. Status of creditors when business continued after dissolution without liquidation — liability of persons continuing business. (1) When any new partner is admitted into an existing partnership or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) of this section with the consent of the retired partners or the representative of the deceased partner but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of 35-10-610(2)(b) either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use, by the person or partnership continuing the business, of the partnership name or the name of a deceased partner as part thereof shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

History: **En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.**

35-10-614. Rights of retiring or estate of deceased partner when the business is continued. When any partner retires or dies and the business is continued under any of the conditions set forth in subsections (1), (2), (3), (5), or (6) of 35-10-613, or 35-10-610(2)(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest or at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership, as against the separate creditors or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by 35-10-613(8).

History: **En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.**

Cross-References

Death of limited partner — rights of estate, 35-12-1105.

Probate — powers and duties of surviving partner, Title 72, ch. 12, part 7.

35-10-615. Accrual of right to account. The right to an account of his interest shall accrue to any partner or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: **En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.**

CHAPTER 11

PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships
(Repealed. Sec. 18, Ch. 260, L. 1979)

Section

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.
35-11-202. Certified copies of register and proof of publication to be evidence.

Chapter Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Part 1

Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

35-11-101. En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R.C.M. 1921; Cal. Civ. C. Sec. 2466; re-en. Sec. 8019, R.C.M 1935; amd. Sec. 2, Ch. 111, L. 1969; R.C.M. 1947, 63-601.

35-11-102. En. Sec. 3281, Civ. C. 1895; re-en. Sec. 5505, Rev. C. 1907; re-en. Sec. 8020, R.C.M. 1921; Cal. Civ. C. Sec. 2468; re-en. Sec. 8020, R.C.M 1935; R.C.M. 1947, 63-602(part).

35-11-103. En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R.C.M. 1921; Cal. Civ. C. Sec. 2469; re-en. Sec. 8021, R.C.M 1935; amd. Sec. 3, Ch. 111, L. 1969; R.C.M. 1947, 63-603.

Part 2

Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every such partnership and of each partner therein.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604; amd. Sec. 155, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979" for "this chapter".

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by him and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605; amd. Sec. 156, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "as herein directed" after "county clerk"; substituted "pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979" for "as herein directed".

CHAPTER 12

LIMITED PARTNERSHIPS

Part 1 — General
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 2 — Formation—Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 3 — Powers, Duties, and Liabilities of Partners
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 4 — Dissolution
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 5 — General Provisions

Section
35-12-501. Short title.
35-12-502. Construction and application.
35-12-503. Rules for cases not provided for in this chapter.
35-12-504. Definitions.
35-12-505. Name.
35-12-506. Reservation of name.
35-12-507. Specified office and agent.
35-12-508. Records to be kept.
35-12-509. Nature of business.
35-12-510. Business transactions of partner with the partnership.
35-12-511 through 35-12-520 reserved.
35-12-521. Secretary of state to establish fees.

Part 6 — Formation—Certificate of Limited Partnership

35-12-601. Certificate of limited partnership.
35-12-602. Amendments to certificate.
35-12-603. Cancellation of certificate.
35-12-604. Execution of certificates.
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Chapter Cross-References
Applicability of partnership law, 35-10-201.

Part 1

General
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments
Histories of Repealed Sections:

35-12-101. En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.

35-12-102. En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.

35-12-103. En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.

35-12-104. En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2

Formation — Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments
Histories of Repealed Sections:

35-12-201. En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.

35-12-205. En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.

35-12-206. En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.

35-12-207. En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.

Part 3

Powers, Duties, and Liabilities of Partners (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-301. En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.

35-12-302. En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.

35-12-303. En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.

35-12-304. En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.

35-12-305. En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.

35-12-313. En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.

35-12-314. En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).

Part 4

Dissolution (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-401. (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947; Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

Part 5

General Provisions

35-12-501. Short title. This chapter may be cited as the "Uniform Limited Partnership Act".

History: En. Sec. 1, Ch. 522, L. 1981.

35-12-502. Construction and application. This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

History: En. Sec. 2, Ch. 522, L. 1981.

35-12-503. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

History: En. Sec. 3, Ch. 522, L. 1981.

35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History: En. Sec. 4, Ch. 522, L. 1981.

35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" in full;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and

(4) may not be the same as or deceptively similar to the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

History: En. Sec. 5, Ch. 522, L. 1981.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-2-1203, 35-6-203.

Limited partner not liable as a general partner, 35-12-703.

Rural cooperative utility names, 35-18-201.

35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

History: En. Sec. 6, Ch. 522, L. 1981.

Cross-References

Reservation of name by business corporation, 35-1-302.

Reservation of name by nonprofit corporation, 35-2-301.

35-12-507. Specified office and agent. Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by 35-12-508; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

History: En. Sec. 7, Ch. 522, L. 1981.

Cross-References

Registered office and agent of business corporation, 35-1-305.

Registered office and agent of nonprofit corporation, 35-2-302.

35-12-508. Records to be kept. (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, set forth in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; and

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years.

(2) These records must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

History: **En. Sec. 8, Ch. 522, L. 1981.**

35-12-509. Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on.

History: **En. Sec. 9, Ch. 522, L. 1981.**

35-12-510. Business transactions of partner with the partnership. Except as otherwise provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto as a person who is not a partner.

History: **En. Sec. 10, Ch. 522, L. 1981.**

35-12-511 through 35-12-520 reserved.

35-12-521. Secretary of state to establish fees. The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.

History: **En. Sec. 65, Ch. 522, L. 1981.**

Cross-References

Fees relating to business corporations, 35-1-1201, 35-1-1202.

Fees relating to nonprofit corporations, 35-2-1001, 35-2-1002.

Part 6

Formation — Certificate of Limited Partnership

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-12-601. Certificate of limited partnership. (1) Two or more persons desiring to form a limited partnership shall execute a certificate of limited partnership. The certificate must be filed in the office of the secretary of state and shall set forth:

(a) the name of the limited partnership;

(b) the general character of its business;

(c) the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

(d) the name and the business address of each partner (specifying the general partners and limited partners separately);

(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;

(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;

(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;

(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;

(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;

(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

(m) any other matters the partners, in their sole discretion, determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

History: **En. Sec. 11, Ch. 522, L. 1981.**

35-12-602. Amendments to certificate. (1) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;

(b) the admission of a new partner;

(c) the withdrawal of a partner; or

(d) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement therein was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, but amendments to show changes of addresses of limited partners need be filed only once every 12 months.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person is liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) of this section if the amendment is filed within the 30-day period specified in subsection (2).

History: En. Sec. 12, Ch. 522, L. 1981.

Cross-References

Admission of a new partner, 35-12-701, 35-12-801.

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-603. Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of the certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate may determine.

History: En. Sec. 13, Ch. 522, L. 1981.

Cross-References

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-604. Execution of certificates. (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by each partner named therein.

(b) Each certificate of amendment must be signed by at least one general partner and by each other partner who is designated in the certificate as a new partner or whose contribution is described as having been increased.

(c) Each certificate of cancellation must be signed by each general partner.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission or increased contribution of a partner must specifically describe the admission or increase.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

History: En. Sec. 14, Ch. 522, L. 1981.

35-12-605. Amendment or cancellation by judicial act. If the persons required by 35-12-604 to execute any certificate of amendment or cancellation fail or refuse to do so, any other partner and any assignee of a partnership interest who is adversely affected by the failure or refusal may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

History: En. Sec. 15, Ch. 522, L. 1981.

35-12-606. Filing in the office of the secretary of state. (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the person who filed it or his representative.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein; and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled.

History: En. Sec. 16, Ch. 522, L. 1981; amd. Sec. 52, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "One original and one copy" for "two signed copies"; in (1)(a), substituted "the original and the copy" for "each duplicate original"; in (1)(b), substituted "the original" for "one duplicate original"; in (1)(c), substituted "copy" for "other duplicate original".

35-12-607. Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on his behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under 35-12-605.

History: **En. Sec. 17, Ch. 522, L. 1981.**

Cross-References

Nature of partner's liability, 35-10-307.

Liability of limited partner, 35-12-703.

35-12-608. Constructive notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated therein as limited partners are limited partners but is not constructive notice of any other fact.

History: **En. Sec. 18, Ch. 522, L. 1981.**

35-12-609. Delivery of certificates to limited partners. Upon the return by the secretary of state pursuant to 35-12-606 of any certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate to each limited partner unless the partnership agreement provides otherwise.

History: **En. Sec. 19, Ch. 522, L. 1981.**

Part 7

Limited Partners

35-12-701. Admission of additional limited partners. (1) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as a new limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

History: **En. Sec. 20, Ch. 522, L. 1981.**

Cross-References

General powers and liabilities of general partner, 35-12-803.

35-12-702. Voting. Subject to the provisions of 35-12-703, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or any other basis) upon any matter.

History: En. Sec. 21, Ch. 522, L. 1981.

35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner as such is not liable for the obligations of a limited partnership unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership;

(d) approving or disapproving an amendment to the partnership agreement; and

(e) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subsections (2)(a) and (2)(b) of 35-12-505, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: En. Sec. 22, Ch. 522, L. 1981.

Cross-References

Limited partnership defined, 35-12-504.

Partnership name not to contain surname of limited partner — exceptions, 35-12-505.

35-12-704. Person erroneously believing himself a limited partner. (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate if any is filed to show the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History: En. Sec. 23, Ch. 522, L. 1981; amd. Sec. 1, Ch. 85, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1)(b) after "enterprise", inserted remainder of subsection.

35-12-705. Right to information. Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable.

History: En. Sec. 24, Ch. 522, L. 1981.

Cross-References

Rights of partners, 35-10-301, 35-10-402, 35-10-404, 35-10-406; Title 35, ch. 10, part 5; 35-10-606, 35-10-609 through 35-10-611, 35-10-614.

Rights of estate, 35-12-1105.

Part 8

General Partners

35-12-801. Admission. After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted only with the specific written consent of each partner.

History: En. Sec. 25, Ch. 522, L. 1981.

35-12-802. When person ceases to be general partner of limited partnership. Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to be a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) unless otherwise provided in the certificate of limited partnership, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without his consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) his death; or

(b) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property;

(7) in the case of a general partner who is acting as such in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership.

History: En. Sec. 26, Ch. 522, L. 1981.

35-12-803. General powers and liabilities. (1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History: En. Sec. 27, Ch. 522, L. 1981; amd. Sec. 2, Ch. 85, L. 1985.

Compiler's Comments

1985 Amendment: Near end of (1) after "restrictions", deleted "and liabilities"; and inserted (2).

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

35-12-804. Contributions by a general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent he is participating in the partnership as a limited partner.

History: En. Sec. 28, Ch. 522, L. 1981.

35-12-805. Voting. The partnership agreement may grant to all or a specified group of general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

History: En. Sec. 29, Ch. 522, L. 1981.

Part 9

Finance

35-12-901. Form of contributions. The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

History: En. Sec. 30, Ch. 522, L. 1981.

35-12-902. Liability for contributions. (1) Except as otherwise provided in the certificate of limited partnership, a partner is liable to the limited partnership for any promise to contribute cash or property or to perform services regardless of whether he is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or whose claim arises after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the precompromise obligation.

History: En. Sec. 31, Ch. 522, L. 1981.

Cross-References

Nature of partner's liability, 35-10-307.

35-12-903. Allocation of profits and losses. The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: En. Sec. 32, Ch. 522, L. 1981.

35-12-904. Allocation of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: En. Sec. 33, Ch. 522, L. 1981.

Part 10

Distribution and Withdrawals

35-12-1001. Interim distributions. Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or on the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership.

History: En. Sec. 34, Ch. 522, L. 1981.

35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History: **En. Sec. 35, Ch. 522, L. 1981.**

Cross-References

Rights of partners after dissolution to application of partnership property or to continue business, 35-10-610.

35-12-1003. Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in the certificate of limited partnership and in accordance with any procedures provided in the partnership agreement. If the certificate of limited partnership does not specify the time or the events on the happening of which a limited partner may withdraw from the limited partnership or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw from the limited partnership upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

History: **En. Sec. 36, Ch. 522, L. 1981.**

35-12-1004. Distributions upon withdrawal. Except as provided in 35-12-1001 through 35-12-1008, upon withdrawal any withdrawing partner is entitled to receive any distributions to which he is entitled under the partnership agreement and, if not provided, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal, based upon his right to share in distributions from the limited partnership.

History: **En. Sec. 37, Ch. 522, L. 1981.**

35-12-1005. Distributions in kind. Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

History: **En. Sec. 38, Ch. 522, L. 1981.**

35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution.

History: **En. Sec. 39, Ch. 522, L. 1981.**

35-12-1007. Limitations on distributions. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership's assets.

History: **En. Sec. 40, Ch. 522, L. 1981.**

35-12-1008. Liability upon return of contributions. (1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, for a period of 1 year thereafter he is liable to the limited partnership for the amount of his contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, for a period of 6 years thereafter he is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contributions which have not theretofore been distributed to him.

History: **En. Sec. 41, Ch. 522, L. 1981.**

Part 11

Assignment of Partnership Interests

35-12-1101. Nature of partnership interest. A partnership interest is a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets. A partnership interest is personal property.

History: **En. Sec. 42, Ch. 522, L. 1981.**

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights thereof. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History: **En. Sec. 43, Ch. 522, L. 1981.**

Cross-References

Nature of partnership liability, 35-10-307.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest thereon. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History: En. Sec. 44, Ch. 522, L. 1981.

35-12-1104. Right of assignee to become limited partner. (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of his assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902.

History: En. Sec. 45, Ch. 522, L. 1981.

35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.

History: En. Sec. 46, Ch. 522, L. 1981.

Cross-References

Rights of estate of deceased partner, 35-10-614.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Assignment of partnership interest, 35-12-1102.

Probate — powers and duties of surviving partner, Title 72, ch. 12, part 7.

Part 12

Dissolution

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-12-1201. Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in the certificate of limited partnership;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and he does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202.

History: **En. Sec. 47, Ch. 522, L. 1981.**

35-12-1202. Dissolution by decree of court. On application by or for a partner, the district court may decree a dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History: **En. Sec. 48, Ch. 522, L. 1981.**

35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; but any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the district court.

History: **En. Sec. 49, Ch. 522, L. 1981.**

Cross-References

Right to wind up partnership, 35-10-609.

35-12-1204. Distribution of assets. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to 35-12-1001 or 35-1-1004.

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to 35-12-1001 or 35-12-1004; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second, respecting their partnership interests, in the proportions in which the partners share in distributions.

History: **En. Sec. 50, Ch. 522, L. 1981.**

Part 13

Foreign Limited Partnerships

35-12-1301. Law governing. Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

History: En. Sec. 51, Ch. 522, L. 1981.

35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership must register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subsection (4) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

History: En. Sec. 52, Ch. 522, L. 1981; amd. Sec. 53, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In introduction, in middle of second sentence, substituted "one original and one copy of the" for "in duplicate an".

35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with a copy of the application, must be returned to the person who filed the application or his representative.

History: En. Sec. 53, Ch. 522, L. 1981; amd. Sec. 54, Ch. 131, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b), substituted "the original" for "one of the duplicate originals"; in (2), substituted "a copy" for "one duplicate original".

35-12-1304. Name. A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" and that could be registered by a domestic limited partnership.

History: En. Sec. 54, Ch. 522, L. 1981.

35-12-1305. Changes and amendments. If any statement in a foreign limited partnership's application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

History: En. Sec. 55, Ch. 522, L. 1981.

35-12-1306. Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation, signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 56, Ch. 522, L. 1981.

35-12-1307. Transaction of business without registration. (1) A foreign limited partnership transacting business in this state without registration may not maintain any action, suit, or proceeding in any court of this state until it has registered.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership and does not prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's transacting business in this state without registration.

(4) A foreign limited partnership, by transacting business in this state without registration appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 57, Ch. 522, L. 1981.

35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1308.

History: En. Sec. 58, Ch. 522, L. 1981.

Part 14

Derivative Actions

35-12-1401. Right of action. A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

History: En. Sec. 59, Ch. 522, L. 1981.

35-12-1402. Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action and at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History: En. Sec. 60, Ch. 522, L. 1981.

35-12-1403. Pleading. In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort.

History: En. Sec. 61, Ch. 522, L. 1981.

35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the limited partnership for the remainder of the proceeds so received by him.

History: En. Sec. 62, Ch. 522, L. 1981.

CHAPTER 13

MINING PARTNERSHIPS

Part 1 — Formation

Section
35-13-101. When a mining partnership exists.
35-13-102. Express agreement not necessary to formation.

Part 2 — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.
35-13-202. Owners of majority interest govern.
35-13-203. Mine — partnership property.
35-13-204. Profits and losses — how shared.
35-13-205. Lien of partner for debts due creditors.
35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner.
35-13-207. Purchaser takes subject to liens — exception for good faith purchaser.
35-13-208. When purchaser takes with notice of liens.

Chapter Cross-References

Abuse of property held jointly or in common — action, 70-1-311, 70-19-202.

Part 1

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: **En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.**

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: **En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.**

Part 2

Relations Between Partners and with Third Persons

Part Cross-References

Relations among partners, partnerships, and third persons, Title 35, ch. 10, parts 3, 4.

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: **En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.**

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.

CHAPTER 14

RESERVED

CHAPTER 15

COOPERATIVE ASSOCIATIONS

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Chapter Cross-References

Fire department relief associations, 19-11-102.

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Montana Business Corporation Act — applicability, 35-1-103.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Livestock protective associations, Title 81, ch. 6.

Part 1
General

Part Cross-References
General corporate law — applicability, 35-1-103.

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable. Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).

Cross-References
Business corporation law — applicability, 35-1-103.
Effect of merger or consolidation, 35-15-505.

35-15-103. Powers. (1) Associations formed under this chapter shall be bodies corporate and politic for the period for which they are organized, not exceeding 40 years.

(2) Associations formed under this chapter may:

(a) sue and be sued;

(b) have a common seal which they may alter or renew at pleasure;

(c) own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business and sell and dispose of the same; and

(d) borrow money and pledge their property, both real and personal, to secure the payment thereof.

(3) Associations formed under this chapter shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed and such as are usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this chapter.

History: En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205.

Cross-References
Business corporation law — applicability, 35-1-103.
Effect of merger or consolidation, 35-15-505.
Powers of cooperatives, 35-18-106.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;
(b) its capital stock;
(c) its location;
(d) the duration of the association; and
(e) the particular branch or branches of industry which they intend to prosecute.

(2) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201; amd. Sec. 31, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "under their hands" deleted ", duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds,".

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

Cross-References

Assignment of stock, 35-15-403.

35-15-203. First meeting. As soon as 10 or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given to each subscriber by depositing same in the post office, properly addressed, at least 10 days before the time fixed, stating the object, time, and place of said meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part).

Cross-References

Stockholders' meetings, 35-15-302.

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be executed by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 32, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence of (1), after "which report shall be" changed "sworn to" to "executed".

Cross-References

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 33, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In third sentence, after "executed" deleted "and acknowledged".

Cross-References

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

Part 3

Shareholders, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall

be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).

Cross-References

First meeting of subscribers, 35-15-203.

Assignment of stock, 35-15-403.

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212.

Cross-References

Assignment of stock, 35-15-403.

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in

each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: (1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part); amd. Sec. 34, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of section, before "by the president" changed "signed and sworn to" to "executed".

Part 4

Shares, Dividends, and Distributions

Part Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-15-401. Classes of stock. (1) The shares of stock shall not be less than $10 or more than $5,000 per share and may be made payable in installments.

(2) Every cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding 6% per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares. However, the owners of common stock in the different classes shall have the same power and vote in the association.

(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: **En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).**

35-15-403. Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share but shall remain jointly liable therefor with the assignee.

History: **En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208.**

Cross-References

Limit on subscription or control of common stock — one share per person, 35-15-202.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member shall be exempt from seizure on attachment or sale under execution.

(2) Upon his death the share shall be sold by the association and the proceeds after deducting all liabilities to the association shall be delivered to his heirs.

History: **En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209.**

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: **En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: **En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).**

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least

10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4); amd. Sec. 35, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), after "signed" deleted "and acknowledged".

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their

obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(3) Nothing in this part shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).

CHAPTER 16

AGRICULTURAL ASSOCIATIONS

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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Part 1

General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: **En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.**

Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.

Part 2

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Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Shares of business corporations, Title 35, ch. 1, part 6.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(3) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302.

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for incorporation, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Directors — number — powers, 35-16-315.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.

Cross-References

General powers of business corporations, 35-1-108.

General powers of nonprofit corporations, 35-2-107.

Issuance of certificate of organization for cooperative associations, 35-15-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: **En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.**

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: **En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.**

Cross-References

Directors — number — powers, 35-16-315.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: **En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.**

35-16-210. Existing associations — reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions hereof desiring to come within the provisions hereof may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions hereof and request 10 or more of their members qualified as herein provided for to prepare and file, in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If thereafter not less than two-thirds of the stockholders or members as such of such cooperative or other corporation, association, society, or group of individuals shall either file with the corporation or district their written consent to such reorganization or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors or other governing board of such existing cooperative or other corporation, association, society, or group of individuals shall be authorized to through proper officers transfer to such new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation or district of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of such reorganization and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: **En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325.**

Cross-References

Objection to notice of hearing of petition for creation of debt, 35-16-404.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. In the event any stockholder or member of such existing cooperative or other corporation, association, society, or group of individuals shall decline to consent to such transfer or refuse to become a member of such new organization, he must, within 30 days from and after receiving written notice of the transfer of said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business his petition praying for the net value of his equity as a stockholder or member in said cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the said property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: **En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326.**

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members which he represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: **En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979.**

Cross-References

Voting proxies, 35-16-311.

Elections, 35-16-312, 35-16-313.

Part 3

Members and Directors

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: **En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.**

Cross-References

Corporate indebtedness as lien upon membership lands, 35-16-401.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions hereof, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation or district or its bylaws, applying for membership therein to the officers thereof by written application, duly acknowledged:

(a) containing a full, true, and correct description of the lands owned by him and proposed to be contained in said corporation or district;

(b) containing a statement of his desire to become a member thereof and his consent to submit his lands to the provisions hereof and to the administration of said corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the lands so owned by him and proposed to be submitted to said corporation or district, its objects and purposes.

(2) If said application shall be in proper form and the applicant be the holder of title or evidence of title to the lands described and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation or district and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands or the greater portion thereof is situate. He shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof and the lands described in the petition shall thereafter be construed to be a part of said corporation or district to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306.

35-16-303. Withdrawal of membership lands — procedure. Any person holding title or evidence of title to membership lands included in a corporation or district organized under the provisions hereof subsequently desiring to withdraw his lands from such corporation or district may do so upon presenting to the board of directors his verified petition stating that he is the holder of title or evidence of title to membership lands included therein, particularly describing the same with a map or plat thereof, that he is desirous of withdrawing from such corporation or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out or furnish a receipt for such amount from the mortgage or lien holders holding liens against such lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of said lands from incorporation or district and its liabilities. Upon presentation of such release to the mortgage or lien holder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lien holder and the withdrawee for the payments of such funds on their debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323.

35-16-304. Withdrawal — application to court for order. In the event the board of directors shall refuse or fail for a period of 30 days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands or the larger proportion of the same shall be situated for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324.

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any such meeting. Where any subdivision or subdistrict fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317.

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.

35-16-314. Qualifications of directors — quorum — vacancies. (1) No person shall be eligible to be a director of any corporation or district organized under the provisions hereof who is not himself a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the bylaws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314.

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.

Cross-References

Amendment of bylaws, 35-16-208.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

History: En. Sec. 2, Ch. 93, L. 1921; re-en. Sec. 6427, R.C.M. 1921; re-en. Sec. 6427, R.C.M. 1935; R.C.M. 1947, 14-331.

Part 4

Corporate Indebtedness

Part Cross-References

Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

Cross-References

Petition for incorporation, 35-16-202.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon and authorizing, directing, and empowering the executive officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: **En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.**

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17

COOPERATIVE AGRICULTURAL MARKETING

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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Part 1

General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(4) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

(5) Associations organized hereunder shall be deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

Cross-References

Nonprofit corporations generally, Title 35, ch. 2.

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.

Cross-References

Articles to specify purpose, 35-17-202.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.

Cross-References

Articles of incorporation to specify purpose, 35-17-202.

Who may be members, 35-17-301.

Assignment of agreement as security for loans, 35-17-408.

Part 2

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall

be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

History: **En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408; amd. Sec. 36, Ch. 174, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of (2), after "incorporators and" deleted "acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances and".

Cross-References

Articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Permissible purposes for organization, 35-17-105.

Directors, 35-17-311.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: **En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409; amd. Sec. 37, Ch. 174, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of third sentence, after "executed" deleted "and acknowledged".

Cross-References

Articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall prepare one original and one copy of a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: **En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420; amd. Sec. 157, Ch. 575, L. 1981; amd. Sec. 55, Ch. 131, L. 1983; amd. Sec. 38, Ch. 174, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 131, near beginning of second sentence, substituted "prepare one original and one copy of" for "make out in duplicate".

Chapter 174, near beginning of second sentence, after "signed" deleted "and sworn to".

1981 Amendment: Substituted "secretary of state" for "corporation commissioners".

Cross-References

Filing fees, 35-17-409.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized hereunder shall pay to the secretary of state $40 and for filing an amendment to the articles and receiving a certificate of amendment, $10.

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422.

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Filing fees, 35-17-409.

Certificate of incorporation for cemetery associations, 35-20-103.

35-17-206. Bylaws. (1) Each association incorporated under this chapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of such votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, time of their election, and the mode and manner of giving notice thereof;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the same, and the purposes for which they may be used;

(h) the amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and the shares of common stock; the conditions upon which and the time when membership of any member shall cease;

(j) the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

Cross-References

Operation detailed, Title 35, ch. 17, part 3.

Part 3

Operation — Members, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Bylaws, 35-17-206.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(3) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(2) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(3) No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-17-303. Limited liability of members. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-304. Withdrawal or expulsion of member. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within 1 year after such expulsion or withdrawal.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: (1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) No director during the term of his office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412.

35-17-312. Officers — election — bank as treasurer. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

History: En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415.

35-17-314. Referendum to membership of matters passed by board. Upon demand of 40% of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416.

35-17-315. Creation of capital reserve — distribution of net earnings. (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations, or in any combination thereof.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430.

Part 4

Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

(3) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: **En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417.**

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: **En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.**

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: **En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.**

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: **En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.**

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: **En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.**

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: **En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.**

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: **En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.**

Part 5

Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).**

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).**

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).**

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5); amd. Sec. 158, Ch. 575, L. 1981; amd. Sec. 39, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), after "signed" deleted "and acknowledged".

1981 Amendment: Deleted "If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger" from the end of (2).

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

(3) No right of any creditor may be impaired by the merger or consolidation without his consent.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7); amd. Sec. 159, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted the third sentence in (1).

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).

CHAPTER 18

RURAL COOPERATIVE UTILITIES

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35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk.
35-18-502. Fees to be charged by secretary of state.
35-18-503. Annual fee to department of revenue — exemption from other taxes.

Chapter Cross-References

Applicability of Montana Nonprofit Corporation Act, 35-2-103.

Power and energy companies, Title 69, ch. 5.

Part 1

General

35-18-101. Short title. This chapter may be cited as the "Rural Electric and Telephone Cooperative Act".

History: **En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.**

35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971; "rural area", as applied to all corporations organized under the provisions of 35-18-105(2), means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of 1,500 persons except that an incorporated or unincorporated city or town with population more than 1,500 persons is considered a "rural area" for purposes of this chapter if the system or facilities serving the persons in the city or town is acquired by a cooperative by agreement with the company or entity serving the city or town, or if the city or town was served by the cooperative when it had a population of less than 1,500 persons and subsequently grew to a population more than 1,500 persons; but for the purposes of this chapter a "rural area" means an area not included within the boundary of any incorporated or unincorporated city or town having a population in excess of 3,500 persons which is not already being served by a system or facilities.

History: (1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979; amd. Sec. 1, Ch. 208, L. 1981.

Compiler's Comments

1981 Amendment: Added the exceptions at the end of (2)(e).

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.

35-18-104. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529.

Cross-References

Regulation of utilities, Title 69, ch. 3.

Utility lines and facilities provisions, Title 69, ch. 4.

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the purposes of making generally available in rural areas adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of rural users thereof.

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979; amd. Sec. 1, Ch. 254, L. 1985.

Compiler's Comments

1985 Amendment: At end of (2) after "thereof", deleted "provided that nonduplication of lines, facilities, or systems providing reasonably adequate service will result therefrom".

35-18-106. Powers of cooperatives. A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems in rural areas and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985.

Compiler's Comments

1985 Amendment: At end of (13)(a) after "thereof", deleted "provided that no duplication of lines, facilities, or systems providing reasonably adequate service will result therefrom".

Cross-References

Articles of incorporation, 35-18-203.

Bylaws, 35-18-207.

Disposition or encumbrance of property, 35-18-317.

Merger or consolidation, 35-18-403.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of

state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered or certified mail to such corporation at the address thereof specified in such instrument.

(3) Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

(4) Any such foreign corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenues and income to be derived therefrom.

History: En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526.

Cross-References

Merger, consolidation, dissolution, winding up, Title 35, ch. 18, part 4.

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.

Cross-References

Meetings of members, 35-18-303.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-18-201. Name. (1) The name of each cooperative shall include the words “electric” or “telephone” and “cooperative” and the abbreviation “Inc.”;

provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.

Cross-References

Members — incorporators — users, 35-18-301.

Incorporators' role in dissolution, 35-18-404.

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(3) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506; amd. Sec. 40, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "signed" deleted "and acknowledged".

Cross-References

Effect of merger or consolidation, 35-18-403.

Filings and fees, Title 35, ch. 18, part 5.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a); amd. Sec. 41, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), after "executed" deleted "and acknowledged".

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-501.

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b); amd. Sec. 42, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence, after "executed" deleted "and acknowledged".

Cross-References

Filing fees, 35-18-502.

35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History: **En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516; amd. Sec. 43, Ch. 174, L. 1983.**

Compiler's Comments

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Filing and fees for articles of conversion, 35-18-501, 35-18-502.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: **En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.**

Part 3

Operation — Members, Trustees, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

35-18-301. Members. (1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof.

(2) Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a).**

35-18-302. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

History: **En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522.**

Cross-References

Effect of merger or consolidation on liabilities, 35-18-403.

Liabilities under dissolution and winding up of cooperatives, 35-18-404, 35-18-405.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at such place as shall be determined by the board of trustees.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g); amd. Sec. 1, Ch. 131, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "at such place as shall be determined by the board of trustees" for "in the city or town in which the principal office of the cooperative is located" at the end of (3); inserted "or 50 members present in person, whichever is fewer" before "shall constitute a quorum" in (5); inserted "or number" after "greater percentage" in (5).

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee thereof; or

(b) representing the cooperative at any meeting or on any business whenever such representation has been approved by the board.

(3) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d); amd. Sec. 1, Ch. 237, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the board of trustees may establish a fixed sum . . . for: (a) attendance . . . (b) representing . . . approved by the board" for "a fixed fee and expenses of attendance, if any, may be allowed for attendance at each meeting of the board of trustees" at the end of (2).

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(2) A majority of the board of trustees shall constitute a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except such as are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: **En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e).**

35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district:

(a) a designated number of trustees shall be elected by the members residing therein;

(b) a designated number of delegates shall be elected by the members residing therein; or

(c) both such trustees and delegates shall be elected by such members.

(2) In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees.

(3) No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: **En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510.**

35-18-314. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary, and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: **En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511.**

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: **En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.**

Cross-References

Acknowledgment of instruments, Title 1, ch. 5, part 2.

35-18-316. Refunds to members. (1) Revenues of a cooperative for any fiscal year shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year, whenever such revenues exceed the amount thereof necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(f) provide a fund, which shall be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: **En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520.**

Cross-References

Distributions to members under dissolution and winding up proceedings, 35-18-405.

35-18-317. Disposition or encumbrance of property. A cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting. However, notwithstanding anything herein contained or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States. Further, the board may, upon the authorization of a majority of those members of the cooperative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or foreign corporation doing business in this state pursuant to the act under which the cooperative is incorporated.

History: **En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521.**

Cross-References

Powers of rural cooperative utilities, 35-18-106.

Disposition of property under merger, consolidation, and dissolution, Title 35, ch. 18, part 4.

35-18-318. Long-term indebtedness — membership approval. Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

History: En. Sec. 1, Ch. 206, L. 1983.

Part 4

Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed

merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514; amd. Sec. 44, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513; amd. Sec. 45, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (3), after "executed" deleted "and acknowledged".

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be

deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a); amd. Sec. 46, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "executed" deleted "and acknowledged".

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and

against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b); amd. Sec. 47, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (2) and (6), after "executed" deleted "and acknowledged".

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

Part 5

Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state, immediately upon the filing in his office of any articles pursuant to this chapter, shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519; amd. Sec. 48, Ch. 174, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence of (1), after "executed" deleted "and acknowledged".

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204.

35-18-502. Fees to be charged by secretary of state. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $40;

(2) filing articles of amendment and issuing a certificate of amendment, $10;

(3) filing articles of consolidation or merger and issuing a certificate of consolidation or merger, $10;

(4) filing articles of conversion and issuing a certificate of conversion, $10;

(5) filing certificate of election to dissolve and issuing certificate of election to dissolve, $10;

(6) filing articles of dissolution and issuing certificate of dissolution, $10; and

(7) filing certificate of change of principal office and issuing certificate of change of office, $10.

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527.

35-18-503. *(Temporary)* **Annual fee to department of revenue — exemption from other taxes.** Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service is supplied within the state but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

35-18-503. *(Effective January 1, 1987)* **Annual fee to department of revenue — exemption from other taxes.** Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service is supplied within the state but, except as provided in 10-4-201, shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528; amd. Sec. 19, Ch. 635, L. 1985.

Compiler's Comments

1985 Amendment: Near middle inserted exception clause referring to 10-4-201. Amendment effective January 1, 1987.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Exempt securities, 30-10-104.

CHAPTER 19

RESERVED

CHAPTER 20

CEMETERY ASSOCIATIONS

Part 1 — Formation

Section

35-20-101. Permissible purposes for association — first meeting — election of trustees.
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35-20-213. Sale of lots.
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35-20-215. Use of gifted property — gratuitous city water.
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35-20-217. Exemption from taxation and execution — no road construction through cemetery.

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35-20-301. Fund required.
35-20-302. Trustees of fund — appointment by district court — qualifications — powers.
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35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting.
35-20-308. Recording appointments of trustees.
35-20-309. Secretary of board.
35-20-310. Transfer of moneys received by association to trustees of fund.
35-20-311. Principal of fund to be reserved — income to be turned over to treasurer.
35-20-312. Use of income of fund.
35-20-313. Investment of fund.
35-20-314. Compensation of trustees of fund.
35-20-315. Annual report of trustees of fund.

Chapter Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Prearranged funeral plans and related services — mandatory trust, Title 72, ch. 27, part 2.

Part 1

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-20-101. Permissible purposes for association — first meeting — election of trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they or a majority of them agree upon and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association shall be known and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three or more than nine. Thereupon they may proceed to elect by ballot the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101.

35-20-102. Classification of trustees — staggered terms. The chairman and secretary of such meeting shall immediately after such election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; those in the second class, 2 years; and those in the third class, 3 years; but the trustees of each class may be reelected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102.

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so

acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103.

35-20-104. Effect of filing — powers of association — eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.

Part 2

Operations Generally — Trustees of Association

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

Cross-References

Local government involvement — cemeteries, Title 7, ch. 35, part 1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: **En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.**

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: **En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.**

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: **En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.**

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: **En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.**

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: **En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.**

Cross-References

Annual report — accounting requirement, 35-20-207.

Estates, Title 72.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: **En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107.**

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which he shall enter as correctly and carefully as may be the name, age, sex, nativity, and cause of death with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased or undertaker as give order for such interment at the time thereof or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: **En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108.**

Cross-References

Secretarial recording of appointments, 35-20-308.

Secretary of association as secretary of trustee or board of trustees, 35-20-309.

Burial of corpse — county coroner, 44-3-403.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: **En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.**

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.

Cross-References

Duties of secretaries, 35-20-308, 35-20-309.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.

Cross-References

Fund required, 35-20-301.

Use of fund income, 35-20-312.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: **En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).**

35-20-216. Inalienability of lots. (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of his decease;
(b) a relative of some person having such interest;
(c) the wife or husband of such a person; or
(d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts thereof to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: **En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119.**

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Part 3

Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever moneys to the amount of $100 shall have been received by such corporation or association, formed, before or after February 16, 1905, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund. The judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of said association.

(2) Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification as hereinafter provided of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, a vacancy shall

exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.

(3) The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Mausoleums and columbariums — bank or trust company as trustee, 35-21-610.

Trustees' Powers Act, Title 72, ch. 21.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Any failure so to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money,

bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(5) The trustee or trustees of such fund may deposit such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds, and securities and pay them out or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such moneys, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

Cross-References

Trustees' Powers Act, Title 72, ch. 21.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: **En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.**

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: **En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.**

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of this chapter to the permanent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: **En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.**

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: **En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.**

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 1 — General

Section

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35-21-102. Definitions.
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Part 2 — Organization and Regulation of Business

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35-21-711. Construction to comply with city ordinances.
35-21-712. Construction in violation of chapter a public nuisance — penalty.
35-21-713. Violations of chapter a misdemeanor.

Chapter Cross-References

Estates, Trusts, and Fiduciary Relationships, Title 72.

Prearranged funeral plans and related services — mandatory trust, Title 72, ch. 27, part 2.

Part 1

General

35-21-101. Short title. This chapter shall be known as the "Mausoleum-Columbarium Act".

History: En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. Definitions. For the purposes of this chapter, certain words used herein shall have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment

of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) "Cremated remains" means human remains after cremation in a crematory.

(3) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

(4) "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

(5) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb the uncremated human remains.

(6) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(7) "Entombment" means the placement of human remains in a crypt or vault.

(8) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains.

(9) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(10) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(11) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(12) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(13) "Mausoleum business", "columbarium business", and "mausoleum--columbarium business or purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium, interring human remains therein, and the care, preservation, and embellishment of such property.

(14) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(15) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but shall not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property including mausoleums and/or columbariums where interment is also made by ground burial.

(16) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(17) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(18) "Plot owner" or "owner" or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

(19) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

(20) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. Wherever the context shall permit "urn garden" shall be deemed to be included in "columbarium".

History: **En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519.**

35-21-103. Exemptions and limitations on applicability of chapter. (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) No condition or section or provision of this chapter shall or may be so construed or interpreted as to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory or combination thereof shall be situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions shall be applicable to and only to mausoleums and/or columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as herein provided and owning, controlling, or operating lands, buildings, structures, etc., solely for the entombment and inurnment of human remains.

History: **(1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014.**

Cross-References

Corporate powers enlarged, 35-21-203.

Part 2

Organization and Regulation of Business

Part Cross-References

General corporate powers — applicability, 35-1-103.

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-21-201. Incorporation required for transaction of business. It is unlawful for any corporation, partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: **En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.**

35-21-202. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall, in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business and either on the dedicated premises or separately, any business incidental to the burial or preparation for burial of dead human bodies.

History: **En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.**

Cross-References

Encumbrances subordinate to dedication, 35-21-407.

Sale of interment plots, 35-21-412.

35-21-203. Corporate powers enlarged. The powers, privileges, and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this chapter.

History: **En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.**

35-21-204. Power to establish and operate mausoleum, columbarium, or crematory. Any private corporation organized under the laws of the state of Montana and authorized by its articles so to do may establish, maintain, manage, improve, or operate a mausoleum, columbarium, or crematory or any combination thereof and conduct any or all of the businesses of a mausoleum-columbarium and crematory either for or without profit to its members or stockholders.

History: **En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).**

35-21-205. Governing board — number of members. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: **En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).**

Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-21-206. Office of director or officer violating chapter becomes vacant. The office of any director or officer who acts or permits action contrary to this chapter immediately thereupon becomes vacant.

History: **En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.**

35-21-207. Rulemaking power. A mausoleum-columbarium authority may make, adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum, columbarium, or crematory and for the other purposes specified in 35-21-208 to 35-21-216, inclusive.

History: **En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705.**

35-21-208. Power to limit use of property. It may restrict and limit the use of all property within its mausoleum, columbarium, or crematory.

History: **En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706.**

35-21-209. Regulation of markers, monuments, and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: **En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.**

35-21-210. Regulation or prohibition of erection of monuments, markers, and structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: **En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.**

35-21-211. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: **En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.**

Cross-References

Acceptance of gifts in trust — improvement, 35-21-622.

Destruction or injury of property, 35-21-704.

35-21-212. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules.

History: **En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.**

35-21-213. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: **En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.**

35-21-214. Rules for other purposes. It may make and enforce rules for all other purposes deemed necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum, columbarium, or crematory, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum, columbarium, or crematory is conducted.

History: En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712.

Cross-References

Sale of interment plots, 35-21-412.

35-21-215. Rules to be printed or typed — inspection. The rules made pursuant to 35-21-214 shall be plainly printed or typewritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.

35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such other person as the mausoleum-columbarium authority designates has the authority of a peace officer for the purpose of maintaining order, enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum--columbarium over which he has charge and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property.

History: En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714; amd. Sec. 160, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "peace officer" for "police officer".

35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, crematories, and columbariums within which the interment of the dead may be authorized by law.

History: En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716.

Cross-References

Acceptance of gifts in trust, 35-21-622.

Part 3

Disposition and Removal of Remains

35-21-301. Right to control disposition of remains — priorities — liability for cost. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) the surviving spouse;
(b) the surviving children of the decedent;
(c) the surviving parents of the decedent.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.

35-21-302. Liability of person signing authorization for interment or cremation. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

History: En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602.

35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such authorization unless it has actual notice that such representation is untrue.

History: En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603.

35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum--columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604.

35-21-305. Removal of remains — consent required — removal by permission of court. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) the surviving spouse;
(b) the surviving children of the decedent;
(c) the surviving parents of the decedent;
(d) the surviving brothers or sisters of the decedent.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. Notice of application to court for removal. Notice of application to the court for such permission shall be given at least 10 days prior thereto personally, or at least 15 days prior thereto if by mail to the mausoleum-columbarium authority and to the persons not consenting and to every other person on whom service of notice may be required by the court.

History: **En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.**

35-21-307. When removals excepted. Sections 35-21-305, 35-21-306 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place, nor does it apply to the disinterment of remains upon order of court or coroner.

History: **En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.**

Part 4

Dedication of Property — Property Rights in Plots

35-21-401. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

History: **En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.**

35-21-402. Filing plat and declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the plat or map dedicating the property exclusively to interment purposes.

History: **En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.**

35-21-403. Dedication complete on filing — tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums and columbariums constructed thereon and burial plots located therein shall be held, occupied, and used exclusively for interment purposes and shall be exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: **En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.**

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

35-21-404. Resurvey — amended map or plat. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: **En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.**

35-21-405. Filed plat and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

History: En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805; amd. Sec. 161, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "dedication of the" before "property".

Cross-References

General powers concerning property, 35-21-202.

35-21-406. Effect of dedication. After property is dedicated to interment purposes pursuant to 35-21-401 to 35-21-405, inclusive, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this chapter.

History: En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.

35-21-407. Encumbrances subordinate to dedication. All mortgages, deeds of trust, and other liens of any nature contracted, placed, or incurred after July 1, 1949, upon property which has been and was, at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this chapter or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed, or lien, dedicated to the mausoleum-columbarium purposes pursuant to this chapter shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication, and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.

35-21-408. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

History: En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.

35-21-409. Public thoroughfare or utility through dedicated property prohibited — consent. After dedication pursuant to this chapter and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it or of not less than two-thirds of the owners of interment plots therein.

History: En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.

35-21-410. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) that no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed;

(2) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-21-411. Notice of hearing on removal of dedication. (1) The notice of hearing provided in 35-21-410 shall be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(2) Said notice shall:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication;

(c) specify the time and place of the hearing.

History: En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.

35-21-412. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules as may be then in effect or thereafter adopted by the mausoleum-columbarium authority and subject to such other and further limitations, conditions, and restrictions as may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of such plot.

History: En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.

Cross-References

Record of ownership and transfer of plots required, 35-21-501.

Records of interments and cremations required, 35-21-502.

35-21-413. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.

35-21-414. Separate conveyed plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.

35-21-415. Selling for resale at profit — misdemeanor. It shall be unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.

35-21-416. Commission or rebate for sale — misdemeanor — exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.

35-21-417. Commission or rebate for causing disposition of body in crematory, mausoleum, or columbarium — misdemeanor. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission or bonus or rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or columbarium is guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815.

35-21-418. Property interest in plot — owner. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.

35-21-419. Spouse — vested right of interment. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.

35-21-420. Right of spouse not divested by conveyance — effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.

35-21-421. Descent of plot on death of owner when no interment made. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred therein are lawfully removed, the plot descends upon the death of the owner to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.

35-21-422. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.

Cross-References

Inheritance and estate tax exemptions, Title 72, ch. 16, part 3.

35-21-423. Affidavit showing death of owner and name of person entitled to plot authorizes use of plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to 35-21-418 to 35-21-421, inclusive, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.

35-21-424. When plot becomes inalienable — family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.

35-21-425. Family plot — persons who may be interred — priorities. (1) In a family plot, one crypt or one niche or interment space therein may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(2) If no parent or child survives, the right of interment goes in the order of death first to the spouse of any child of the record owner, and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.

35-21-426. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: **En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.**

35-21-427. Termination of right of interment upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: **En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.**

35-21-428. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: **En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.**

35-21-429. Conveyance to joint tenants. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: **En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.**

35-21-430. Death of joint tenant — effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

History: **En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.**

35-21-431. Affidavit showing death of joint tenant and identity of survivors authorizes use of plot. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: **En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.**

35-21-432. Co-owners of plot — representative — authority not liable for interment pursuant to request of any co-owner. When there are several owners of a plot or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: **En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.**

35-21-433. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: **En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.**

Part 5

Records

35-21-501. Record of ownership and transfer of plots required. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.

History: **En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.**

Cross-References

Record of interment open to the public, 35-20-210.

Sale of interment plots, 35-21-412.

35-21-502. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: **En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.**

Cross-References

Sale of interment plots, 35-21-412.

Record of ownership and transfer of plots required, 35-21-501.

35-21-503. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: **En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.**

35-21-504. Record of casket before cremation — inspection. No crematory operated by a mausoleum-columbariun authority shall, after July 1, 1949, cremate the remains of any human body without making a permanent signed record of the color, shape, and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

History: **En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.**

35-21-505. Violation a misdemeanor. Each person violating any provision of 35-21-504 shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: **En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.**

Cross-References
Misdemeanor penalty specified, 46-18-212.

Part 6

Endowment Care and Trust Funds

Part Cross-References
Agency, Title 28, ch. 10.
Trusts in general, Title 72, ch. 20.

35-21-601. Authority to establish endowment care fund — commingling for investment. (1) Every mausoleum-columbarium authority which on or after July 1, 1949, maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.

35-21-602. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.

35-21-603. Investment of funds — use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested, and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both and the grounds in which they are situated and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.

35-21-604. Permissible investment securities. The endowment care funds shall be invested, reinvested, and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Cross-References
Permissible investments, 17-6-211.
Mausoleum-columbarium authority — investments, 35-21-609.

35-21-605. Plans for general care — collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum--columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

History: En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.

35-21-606. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.

35-21-607. Agreement for endowment care of plot. Upon the application of the owner of any plot and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.

35-21-608. Board of trustees of fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five in number for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

History: En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.

35-21-609. Directors of mausoleum-columbarium authority as trustees — investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.

Cross-References

Permissible investment securities, 35-21-604.

35-21-610. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.

35-21-611. Compensation of trustees. No sum in excess of 5% of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of such income divided by the number of trustees shall be less than $100, each trustee shall nevertheless be entitled to receive a minimum of $100 per year for his services as such trustee.

History: **En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.**

35-21-612. Annual financial report to be filed with district court. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: **En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.**

35-21-613. Gifts for endowment care fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

History: **En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.**

35-21-614. Endowment fund and contributions for charitable purposes — validity of contributions. (1) The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: **En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.**

35-21-615. Endowment care mausoleum-columbarium — amount of deposit required. (1) An endowment care mausoleum-columbarium is one which shall after July 1, 1949, deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) $5 for each niche;

(b) $15 for each crypt.

(2) The deposit shall be made not later than the 20th day of the month following the final payment on the purchase price of the plot.

History: **En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.**

35-21-616. Nonendowment care mausoleum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in 35-21-615.

History: **En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.**

35-21-617. Endowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

History: **En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.**

35-21-618. Annual report of endowment care mausoleum or columbarium to be filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain, as of the close of its last fiscal year:

(1) amount of principal of the endowment care fund;

(2) total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which shall actually show the financial condition of the trust.

History: **En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.**

35-21-619. Annual revision of report — verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: **En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.**

35-21-620. Nonendowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds.

History: **En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.**

35-21-621. Violation a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of 35-21-615 to 35-21-620, inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature, or other publication shall be guilty of a misdemeanor.

History: **En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.**

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-622. Acceptance of gifts in trust. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to either or all of the following purposes:

(1) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(2) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated;

(3) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(4) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.

Cross-References

Regulation of plants or shrubs, 35-21-211.

Power to acquire property, 35-21-217.

35-21-623. Contributions for charitable purposes — validity of contributions. (1) The sums paid in or contributed to the fund authorized by this chapter are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.

35-21-624. Director, officer, or trustee not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.

35-21-625. Illegal loan — misdemeanor. Every director or officer authorizing or consenting to a loan and the person who receives a loan in violation of this chapter are severally guilty of a misdemeanor.

History: En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-626. Merchandise trust fund. Whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter.

Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Part 7

Desecration and Vandalism Regulation of Construction

35-21-701. Removal of remains with intent to sell or dissect — penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium or from any place where it is deposited while awaiting interment in a mausoleum or columbarium with intent to sell it or to dissect it without authority of law or from malice or wantonness shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.

35-21-702. Mutilation or removal of remains without authority — penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law shall be punished by imprisonment in the state penitentiary for not more than 3 years or by a fine of not more than $1,000 or by both.

History: En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.

35-21-703. Attachment or detention of remains — misdemeanor. A person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

History: En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.

35-21-704. Destruction or injury of property — interference with funeral or interment — misdemeanor. (1) A person is guilty of criminal mischief and is punishable as provided in 45-6-101 who without right knowingly does any of the following:

(a) destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes a crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or a gate, door, fence, wall, post, or railing or an inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) destroys, cuts, breaks, removes, or injures a building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which a mausoleum or columbarium is located.

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or a person who is engaged in a funeral service or an interment.

History: En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.

Cross-References

Regulation of plants or shrubs, 35-21-211.

35-21-705. Civil liability — application of recovery. Any person violating any provision of 35-21-704 is liable in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: **En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.**

35-21-706. Exemptions from criminal mischief provisions. (1) The provisions of 35-21-704 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 35-21-704 do not apply to the removal of anything placed in a mausoleum or columbarium or the grounds within which it is situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated.

History: **En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.**

35-21-707. Converted or altered building subject to chapter. A building not erected for or which is not used as a place of interment of human remains which is converted or altered for such use by a mausoleum--columbarium authority is subject to this chapter.

History: **En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.**

35-21-708. Construction requirements — durability. No building or structure intended to be used for the interment of human remains shall be constructed and a building not used for the interment of human remains shall not be altered for use or used for interment purposes unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: **En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.**

35-21-709. Fireproof construction of crematories — exceptions. (1) No crematory shall be constructed or established by a mausoleum-columbarium authority unless the crematory is of fireproof construction and there is in connection therewith either a fireproof columbarium or a fireproof mausoleum, amply equipped at all times for the interment of remains of bodies cremated at the crematory and a fireproof room for temporary care of cremated remains.

(2) Nothing herein contained shall prevent crematories existing on July 1, 1949, from being repaired, altered, or reconstructed. Nothing in this chapter shall prohibit the cremation of human remains in crematories existing on July 1, 1949, or the temporary storage of cremated remains.

History: **En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.**

35-21-710. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums constructed after July 1, 1949, shall be of Class "A" fireproof construction.

History: En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.

35-21-711. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing Class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.

Cross-References

Municipal and county building codes, Title 50, ch. 60, part 3.

35-21-712. Construction in violation of chapter a public nuisance — penalty. An owner or operator of a mausoleum or columbarium erected in violation of this chapter is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than $500 or more than $5,000 in the case of a corporation or as provided in 45-8-111 in the case of an individual. In addition, the owner or operator is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case.

History: En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.

Cross-References

Public nuisance, 45-8-111.

35-21-713. Violations of chapter a misdemeanor. Every person who violates any provision of this chapter is guilty of a misdemeanor and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.

Cross-References

Misdemeanor penalty specified, 46-18-212.

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